

Public Health and Wellbeing Amendment (Pandemic Management) Bill 2021

Introduction Print

EXPLANATORY MEMORANDUM

General

The Public Health and Wellbeing Amendment (Pandemic Management) Bill 2021 ("the Bill") will establish a contemporary, fit-for-purpose regulatory framework to enable the effective management of pandemics, including the current COVID-19 pandemic. The Bill will introduce amendments to enable the protection of public health from the serious threat posed by pandemic diseases and diseases of pandemic potential. Most critically, the Bill focuses on saving Victorian lives during pandemics, and promoting and protecting the social, economic and mental welfare of Victorians to the greatest extent possible during these confronting events.

The Bill amends Victoria's principal public health statute, the **Public Health and Wellbeing Act 2008**, primarily by inserting a new Part 8A—Protection of life and public health during pandemics. The main objective of the new Part is to protect public health and wellbeing in Victoria by establishing a regulatory framework for preventing and managing the serious risk to life, public health and wellbeing presented by the outbreak or spread of pandemics and diseases of pandemic potential.

The following are among the key features of the new Part 8A—

- the Premier is empowered to make pandemic declarations, which enliven a range of powers in new Part 8A to respond to pandemic diseases and diseases of pandemic potential;
- the Minister may make pandemic orders setting out public health measures and restrictions to protect public health in relation to a pandemic disease or disease of pandemic potential,

and the Minister is required to publish a statement of reasons for making those orders;

- pandemic orders may include measures the Minister believes are reasonably necessary to protect public health, with the use of detention powers under new Part 8A being subject to strict safeguards and review rights;
- both the Premier and the Minister must seek and consider the advice of the Chief Health Officer in making a pandemic declaration or a pandemic order respectively, and the advice of the Chief Health Officer must be made available to Parliament and the public;
- public health considerations are of primary importance in making pandemic orders, however the Minister may also take into account other matters, including social and economic considerations in making a pandemic order;
- new Part 8A recognises the importance of the human rights protected by Victoria's Charter of Human Rights and Responsibilities and the Minister must publish an explanation of any Charter rights that are or may be limited by a pandemic order;
- an Independent Pandemic Management Advisory Committee will be established to provide advice to the Minister in relation to the exercise of powers under new Part 8A;
- authorised officers have a suite of pandemic management powers under the new Part to assist in protecting public health, including powers to support the implementation of pandemic orders;
- provisions will better support information-sharing to protect public health during pandemics, and strong safeguards are included to ensure the protection of contact tracing information;
- new offences and penalties are included for breaches of pandemic orders and other requirements, including an aggravated offence to deter the most serious conduct, recognising the serious risks to public health that may result from non-compliance.

New measures will also be introduced to promote fairness for vulnerable and at-risk communities, including a concessional infringement scheme and a published compliance and enforcement policy to address the impacts of enforcement on these communities.

The Bill is a crucial next step in the evolution of Victoria's COVID-19 response. It provides the State with a contemporary, fit-for-purpose regulatory scheme with the appropriate powers and checks and balances to protect the Victorian community from the dangers posed by pandemic diseases or diseases of pandemic potential, while recognising and upholding the human rights, accountability and proportionality imperatives that are so important to democracy.

Victoria's current state of emergency, and the suite of powers it supports to manage the pandemic and keep Victorians safe, expires on 15 December 2021 and cannot be extended beyond this period. The Bill provides a regulatory framework that may be used for the ongoing management of the COVID-19 pandemic and future pandemics, drawing on critical lessons learned as part of Victoria's COVID-19 response.

The Bill will ensure Victoria's laws are well-adapted to respond to current and future pandemics, by protecting the public health and wellbeing of Victorians from the serious risks to life, public health and wellbeing posed by pandemic diseases and diseases of pandemic potential.

Clause Notes

Part 1—Preliminary

Part 1 provides for preliminary matters, including purposes and commencement.

Clause 1 sets out the main purposes of the Bill, which are to amend the **Public Health and Wellbeing Act 2008** in relation to the effective management of pandemics; to amend the **Public Health and Wellbeing Act 2008** in relation to fees for detention of persons in quarantine during the COVID-19 pandemic; amend the **Infringements Act 2006** to broaden what constitutes special circumstances in that Act and the **Fines Reform Act 2014** and to make consequential amendments to those Acts for the purposes of the concessional infringement scheme in the **Public Health and Wellbeing Act 2008**; and to make consequential amendments to other Acts.

Clause 2 sets out when the provisions of the Bill come into operation. Subclause (1) provides that, subject to subclauses (2), (3) and (4), the Act will come into operation on the day after the day on which it receives the Royal Assent.

Subclause (2) provides for certain provisions of the Act to come into operation on a day or days to be proclaimed. These are—

- Part 3, which sets out amendments relating to a new concessional infringement scheme, and Division 3 of Part 4, which sets out consequential amendments to the **Fines Reform Act 2014** related to that scheme;
- Division 2 of Part 5, which makes various amendments relating to quarantine detention fees during the COVID-19 pandemic;
- Part 6, which primarily amends the special circumstances test in the **Infringements Act 2006**.

Subclause (3) provides that Division 2 of Part 4 comes into operation on 16 December 2021. The Division makes certain amendments and repeals to provisions of the Principal Act relating to the COVID-19 state of emergency, which cannot be extended beyond 15 December 2021.

Subclause (4) provides that if a provision mentioned in subclause (2) does not come into operation before the day that is 12 months after the day on which the Act receives the Royal Assent, it comes into operation on that day. The forced commencement date is primarily intended to ensure adequate time is available to implement the concessional infringement scheme, including necessary operational and IT changes to be made to enable applications to be processed and reduced penalty amounts applied to relevant fines. Most of the provisions of the Act will commence on Royal Assent, including Part 2, which sets out amendments relating to pandemic declarations, including by inserting new Part 8A into the Principal Act.

Clause 3 provides that in this Bill, the **Public Health and Wellbeing Act 2008** is called the Principal Act.

Part 2—Amendments relating to pandemic declarations

- Clause 4 amends section 3 of the Principal Act to add new definitions, amend existing definitions and to substitute existing interpretative provisions in section 3 that relate to a number of existing definitions in section 3.

Subclause (1) inserts into section 3(1) of the Principal Act new definitions. Key new definitions include *contact tracing information*, *contact tracing purposes*, *disease of pandemic potential*, *Independent Pandemic Management Advisory Committee*, *pandemic declaration*, *pandemic disease*, *pandemic management area*, *pandemic management power* and *pandemic order*.

Explanations for some of the important new definitions are provided below.

A *pandemic declaration* has the meaning given by section 165AB(1). The making of a pandemic declaration enables the use of certain powers under new Part 8A to manage pandemics and diseases of pandemic potential. A pandemic declaration may be made if the Premier is satisfied there is a serious risk to public health arising from a pandemic disease or a disease of pandemic potential. A pandemic declaration must specify the *pandemic management area*, which is an area specified in a pandemic declaration to be an area to which the pandemic declaration applies.

The definitions of *disease of pandemic potential* and *pandemic disease* are relevant to the making of a pandemic declaration. The definitions of these terms are set out in new section 3(5) and (6) respectively and explained below.

A *pandemic order* has the meaning given in new section 165AI(1). Pandemic orders are the key instruments that may be made by the Minister when a pandemic declaration is in force to impose measures the Minister considers reasonably necessary to protect public health arising from a pandemic disease or a disease of pandemic potential.

Authorised officers may be authorised by the Chief Health Officer to exercise certain powers to manage the serious risk to public health arising from a pandemic disease or a disease of pandemic potential when a pandemic declaration is in force. There are 2 categories of such powers—a *pandemic*

management power means a pandemic management order power or a pandemic management general power.

A ***pandemic management order power*** means a power under section 165B(1)(a) or (b). These are powers that may be exercised by authorised officers in relation to pandemic orders.

A ***pandemic management general power*** means a power under section 165BA(1)(a) or (b). These are powers that are generally available to authorised officers who are authorised to exercise the pandemic management powers, and may be exercised independently of there being a relevant pandemic order.

Subclause (2) amends the definitions of ***community transmission*** in section 3(1) of the Principal Act. The current definition defines ***community transmission*** in relation to COVID-19. The amendments made by subclause (2) expand the definition to apply in relation to any pandemic disease or disease of pandemic potential. The definition is relevant to section 3(4), which is amended by subclause (5) and is explained below.

Subclause (3) amends the definition of ***prescribed senior officer*** to provide that a person or class of person who is an employee of a health service may be prescribed as a prescribed senior officer for the purposes of the Principal Act. This amendment supports flexibility in responding to pandemics and in other circumstances by enabling the Chief Health Officer and the Secretary to delegate their powers, duties and functions under the Principal Act to a skilled workforce of health service employees, without those persons needing to be employed under the **Public Administration Act 2004**.

Subclause (4) makes a grammatical correction in the definition of ***serious risk to public health*** in section 3(1) of the Principal Act.

Subclause (5) substitutes section 3(4) of the Principal Act. That section currently clarifies that, without limiting the definition of ***serious risk to public health*** in section 3(1) of the Principal Act, COVID-19 may pose a material risk of substantial injury or prejudice to the health of human beings even when the rate of community transmission of COVID-19 in Victoria is low or there have been no cases in Victoria for a period of time. The amendments made by subclause (5) expand this interpretive provision to apply to any pandemic disease or disease of pandemic potential for the purposes of the Act, to avoid doubt that a pandemic disease or a disease of pandemic potential could

still give rise to a serious risk to public health in these circumstances.

Subclause (6) inserts new section 3(5) and (6) into the Principal Act. These provisions set out definitions explaining when a disease is a *pandemic disease* or a *disease of pandemic potential* for the purposes of the Principal Act.

The definition of *pandemic disease* in subclause (5) clarifies when an infectious disease is a pandemic disease for the purposes of the Principal Act, recognising that a disease may be pandemic at some times and not others (*infectious disease* is already defined in section 3(1) of the Principal Act). The definition in subclause (5) states that an infectious disease is a *pandemic disease* at a particular time if, at that time, there is a pandemic outbreak of that infectious disease. A pandemic outbreak may be ongoing for a long period of time, for example the ongoing global outbreak of COVID-19.

The word "pandemic" is not itself defined in the Principal Act. It is intended to have its ordinary meaning and is generally understood (as a noun) to mean an outbreak or epidemic of a disease occurring over a very large area (such as an entire country, or continent, or worldwide), typically affecting a large number of people. Similarly, when used as an adjective in relation to a disease, "pandemic" can be understood to refer to a widespread (or global) outbreak of that disease.

Subclause (6) includes a definition clarifying when an infectious disease is a *disease of pandemic potential*. This is an important concept in new Part 8A as a pandemic declaration may be made on the basis of a serious risk to public health arising from a disease of pandemic potential (as well as a pandemic disease).

The definition covers infectious diseases that—

- have not yet given rise to a pandemic, but have the potential to do so; and
- were previously pandemic diseases but are not at that time pandemic diseases, but that have an ongoing potential to (again) give rise to a pandemic.

This definition recognises that a disease may have pandemic potential both before an outbreak of a disease and as a pandemic disease abates. For example, the pandemic potential of COVID-19 was recognised before a global pandemic was

declared by the World Health Organisation. Similarly, even after the pandemic phase of a disease has ended, there may be a risk of new variants of the disease giving rise to a pandemic, or measures to respond to that disease becoming less effective over time, such that a disease may re-emerge as a pandemic disease.

- Clause 5 amends section 19 of the Principal Act by inserting a new section 19(1)(ab). This amendment enables the Secretary to delegate powers, duties and functions to "any prescribed senior officer". The definition of *prescribed senior officer* will be amended by clause 4(3) to include employees of health services. The effect of these amendments is therefore to enable the Secretary to delegate powers, duties and functions to employees of health services. This will ensure the Secretary is able to delegate to this skilled workforce where appropriate, including to utilise this surge capacity to assist in responding to a pandemic.
- Subclause (2) amends section 19(5) of the Principal Act to clarify that the power conferred on the Secretary by section 50 of the Principal Act (which concerns the conduct of public inquiries by the Secretary) may be delegated as set out in subsection (5), despite subsection (1) as amended.
- Clause 6 amends section 20A of the Principal Act. Section 20A is an interpretative provision that concerns the Chief Health Officer's exercise of public health risk powers and emergency powers under sections 189(a) or 199(2)(a) respectively of the Principal Act. Section 20A provides that the Chief Health Officer may personally exercise those powers if the Chief Health Officer has been appointed as an authorised officer and has authorised officers to exercise those powers. Clause 6 inserts a new section 20A(aa) that ensures the Chief Health Officer can similarly exercise the public health risk powers and the pandemic management powers if the Chief Health Officer has authorised the use of those powers under new section 165AW(2)(a).
- Clause 7 amends section 21(b) of the Principal Act to provide that one of the functions and powers of the Chief Health Officer is to provide advice to the Premier on matters relating to public health and wellbeing. Section 21(b) currently refers to the provision of advice to the Minister or the Secretary. The amendment recognises in particular the role of the Chief Health Officer under new Part 8A to provide advice to the Premier in relation to the making of a pandemic declaration.

- Clause 8 amends section 22, which provides for the Chief Health Officer's power of delegation. New section 22(1A) enables the Chief Health Officer to delegate the powers, duties or functions under sections 165AW, 189 or 199 to an executive within the meaning of section 4(1) of the **Public Administration Act 2004** or a prescribed senior officer. These sections relate to authorisation of authorised officers to exercise public health risk powers, emergency powers and pandemic management powers. Unlike section 22(1), powers, duties and functions may be delegated under section 22(1A) whether or not the person to whom they are delegated is a registered medical practitioner. This amendment recognises that a large number of authorised officers may need to be authorised to effectively respond to a pandemic, including broader classes of authorised officers permitted to be appointed under Part 13 of the Principal Act currently, and new section 165CN to be inserted by the Bill, such as police officers, protective services officers, Worksafe inspectors, public sector employees of other States and territories and designated health service providers. Expanding the ability to delegate the power to authorise these persons assists with efficiently operationalising a pandemic response, if the Chief Health Officer considers it appropriate to delegate this power.
- Clause 9 amends section 28 of the Principal Act. The section currently provides for the special powers that may be exercised by the Secretary in respect of Councils and Council officers when a state of emergency exists, including powers to direct Councils and Council officers to perform duties and functions or to exercise powers. The clause amends the section to provide for the special powers to also be available to be exercised by the Secretary when a pandemic declaration is in force. Clause 9 amends section 28 in 2 ways. First, clause 9(1) amends the heading to the section to refer to a pandemic. Second, clause 9(2) amends the body of section 28 to ensure that the powers available to the Secretary under the provision may be exercised during a pandemic as well as a state of emergency.
- Clause 10 amends section 30 of the Principal Act to enable the Secretary, by instrument, to appoint an employee of a health service to be an authorised officer. This amendment ensures there is flexibility to draw on the skills and expertise of this workforce to assist in dealing with public health risks, including (but not limited to) responding to pandemics.

- Clause 11 amends section 54(b) of the Principal Act. That provision currently provides that Division 4 of Part 5 of the Principal Act, which deals with collection and disclosure of information, prevails over other provisions of the Act dealing with the same matters to the extent of any inconsistency. The amendment clarifies that Division 4 of Part 5 does not prevail over Division 7 of new Part 8A (which deals with information sharing) and Division 8 of new Part 8A (which sets out safeguards for contact tracing information). This ensures the powers and safeguards in Divisions 7 and 8 of new Part 8A prevail to the extent of any inconsistency.
- Clause 12 inserts a new Part 8A into the Principal Act to establish a regulatory scheme for the management of pandemics and diseases of pandemic potential.

Part 8A—Protection of life and public health during pandemics

New Part 8A establishes a regulatory framework for the protection of life and public health during pandemics. The new Part establishes a range of new mechanisms, powers, duties and protections to ensure an effective framework to respond effectively to pandemic diseases and diseases of pandemic potential, while also ensuring transparency and accountability in decision-making.

Division 1—Objects and interpretation

Division 1 of new Part 8A sets out the objective of the new Part 8A, and other provisions to assist interpretation.

New section 105 specifies the objective of new Part 8A. The objective of the Part is to protect public health and wellbeing in Victoria by establishing a regulatory framework for—

- Preventing and managing the serious risk to life, public health and wellbeing presented by the outbreak or spread of pandemics and diseases of pandemic potential. This objective recognises the serious risks that may arise from these diseases and the paramount need to protect public health, including to prevent loss of life.
- Supporting proactive and responsive decision-making for the purposes of preventing and managing the outbreak or spread of pandemics and diseases of pandemic potential. This objective recognises the need

to respond quickly and decisively to address the serious threat that may posed by these diseases.

- Ensuring that decisions made and actions taken under new Part 8A are informed by public health advice and other relevant information, including but not limited to advice given by the Chief Health Officer. This objective recognises that public health responses should be properly informed by relevant advice and acknowledges the important role of the Chief Health Officer in providing expert advice.
- Promoting transparency and accountability in relation to decisions made and actions taken under this Part. This objective recognises the important public interest in understanding how decisions and actions, that are taken to protect public health but may significantly impact large numbers of people, are taken under the new Part.
- Safeguarding contact tracing information that is collected when a pandemic declaration is in force. This objective recognises the importance of ensuring public trust in the contact tracing system by carefully safeguarding this information from misuse.

New section 165A(2) states Parliament's intention that in the administration of new Part 8A, any limitations on the human rights protected by the Charter of Human Rights and Responsibilities should be demonstrably justified in accordance with section 7(2) of the Charter. As the response to the COVID-19 pandemic has made clear, effectively responding to public health risks arising from a pandemic may necessarily involve restrictive measures to be imposed in order to protect public health and promote the right to life in section 9 of the Charter. Such measures may limit other Charter rights. Section 7(2) of the Charter provides that human rights may only be subject to such reasonable limits as can be demonstrably justified in a free and democratic society based on human dignity, equality and freedom, and taking into account the relevant factors specified in the Charter. New section 165A(2) confirms the critical importance of these rights and that any limits on these rights should be demonstrably justified in responding to pandemic diseases and diseases of pandemic potential under the new Part 8A.

The objective of the new Part 8A and interpretive provisions operate in addition to the existing objective of the Principal Act and the principles in Part 2 of the Principal Act. These objectives and principles have been and will continue to be important considerations to inform Victoria's response to COVID-19 and any future pandemics, and include—the principle of evidence based decision-making; the principle of primacy of prevention; the principle of accountability; the principle of proportionality; and the principle of collaboration.

Division 2—Pandemic declarations

The making of a pandemic declaration enables the use of certain powers under new Part 8A to respond to pandemic diseases and diseases of pandemic potential.

Division 2 of new Part 8A contains provisions concerning pandemic declarations, including in relation to—

- the making of pandemic declarations;
- the form and content of pandemic declarations;
- when pandemic declarations are in force and not in force;
- variation, extension and revocation of pandemic declarations;
- notification of pandemic declarations;
- reporting to Parliament in respect of pandemic declarations; and
- tabling of reports in Parliament in respect of pandemic declarations.

New section 165AB sets out the power of the Premier to make a pandemic declaration. Subsection (1) provides that the Premier may make a pandemic declaration if satisfied that there is a serious risk to public health arising from—

- a pandemic disease; or
- a disease of pandemic potential.

A *serious risk to public health* is defined in the Principal Act (subject to minor grammatical amendments to be made by clause 4(4) of the Bill) to mean a material risk that substantial injury or prejudice to the health of human beings has occurred

or may occur, having regard to certain specified factors.

Section 3(4) of the Principal Act, as amended by clause 4(5) of the Bill, provides additional interpretive guidance in relation to the meaning of this term as applied to pandemic diseases and diseases of pandemic potential.

New section 3(5) and (6), to be inserted by clause 4(6) of the Bill, explain when an infectious disease is a *pandemic disease* or a *disease of pandemic potential* for the purposes of the Principal Act.

Subsection (2) requires the Premier to consult with, and consider the advice of, the Minister and the Chief Health Officer before making a pandemic declaration. This recognises that a decision to make a pandemic declaration should be properly informed by public health considerations including the expert advice of the Chief Health Officer.

Subsection (3) clarifies that the Premier may make a pandemic declaration whether or not at the time the declaration is made the relevant disease is present in Victoria. This recognises that the threat of a pandemic disease or a disease of pandemic potential entering (or re-entering) or becoming present in Victoria could still present a serious risk to public health in Victoria. This enables a pandemic declaration to be made to enable precautionary and preventative actions to be taken to prevent such a disease posing a serious risk to public health from becoming present in Victoria.

Subsection (4) provides that the validity of a pandemic declaration is not affected by the declaration being made on the basis that the Premier was satisfied, at the time the declaration is made, that there was a serious risk to public health arising from a disease of pandemic potential, but the disease was a pandemic disease at the time, and vice versa. This recognises that a disease may move between being a disease of pandemic potential and a pandemic disease and vice versa at different points in time. Subsection (4) is to ensure a declaration is not rendered invalid merely because the disease was incorrectly regarded by the Premier as being one rather than the other at a particular point in time, noting a declaration can be made on the basis of a serious risk arising from either a pandemic disease or a disease of pandemic potential. Importantly, however, if it is not open to the Premier to be satisfied that if the disease is neither a pandemic

disease or a disease of pandemic potential, a declaration cannot be validly made in respect of the disease.

New section 165AC provides for the form and content of a pandemic declaration, including in respect of the area or areas to which the declaration applies, the disease or potential pandemic disease the declaration relates to, and the period the declaration continues in force subject to its extension, the need for an end date to be specified as well as related interpretative matters.

Subsection (1) provides that a pandemic declaration must be in writing and must specify each of—

- the area or areas to which the declaration applies. This may be the whole of Victoria, or one or more specified areas of Victoria;
- the pandemic disease, or the disease of pandemic potential, to which the declaration relates;
- the period for which the declaration continues in force, which must not exceed a period of 4 weeks but may be extended under section 165AE (section 165AE provides for extension for up to 3 months at a time). The period for the initial declaration is shorter than the period for which a declaration may be extended, to encourage a precautionary approach to making an initial declaration, and to ensure that the initial decision is reassessed within 4 weeks to determine whether the pandemic declaration continues to be the appropriate mechanism to respond to the public health risks arising from the disease.

Subsection (2) provides that if, on the coming into force of a pandemic declaration, a declaration of a state of emergency will cease to be in force under new section 165CH(3), the pandemic declaration must include a statement to that effect. New section 165CH(3) sets out provisions relating to the interaction between a state of emergency and the making of a pandemic declaration. Subsection (3) provides that a failure to include the statement required by subsection (2) does not affect the validity of a pandemic declaration.

New section 165AD makes provision for when a pandemic declaration comes into force and ceases to be in force.

Subsection (1) provides that a pandemic declaration comes into force—

- on the day specified in the declaration and, if a time is also specified, at that time on that day; or
- if no day is specified in the declaration, immediately upon its making.

Subsection (2) provides that a pandemic declaration continues in force until—

- the end of the period specified in the declaration under new section 165AC(1)(c) or, if the declaration is extended under new section 165AE(1), at the end of the period as extended; or
- if the declaration is revoked before it ceases to be in force under paragraph (a), upon its revocation.

New section 165AE provides for the variation, extension and revocation of pandemic declarations.

New section 165AE(1) provides that the Premier may vary or extend a pandemic declaration if satisfied that there continues to be a serious risk to public health arising from—

- a pandemic disease, including a disease that was a disease of pandemic potential when the pandemic declaration first came into force but is a pandemic disease at the time of the variation or extension; or
- a disease of pandemic potential, including a disease that was a pandemic disease when the pandemic declaration first came into force but is a disease of pandemic potential at the time of the variation or extension.

Subsection (1) recognises that a disease of pandemic potential may become a pandemic disease, or vice versa, and a new declaration should not be required in these circumstances. Rather, the Premier may extend the existing declaration provided there continues to be a serious risk to public health and the disease is one of either a pandemic disease or a disease of pandemic potential.

Subsection (2) provides that subsection (1) applies whether or not, at the time of the variation or extension, the disease is present in Victoria. This recognises that the threat of a

pandemic disease or a disease of pandemic potential entering (or re-entering) or becoming present in Victoria could still present a serious risk to public health in Victoria. This enables a pandemic declaration to be varied or extended to enable precautionary and preventative actions to be taken to prevent such a disease posing a serious risk to public health from becoming present in Victoria.

Subsection (3)(a) provides that the Premier must revoke a pandemic declaration if the Premier is satisfied that there is no longer a serious risk to public health arising from a pandemic disease or a disease of pandemic potential. This is an important measure to ensure that a pandemic declaration does not continue in force if it is not open to the Premier to be satisfied that there is a serious risk to public health arising from a disease that is either a pandemic disease or a disease of pandemic potential. Diseases that no longer meet the threshold for the making of a pandemic declaration may then be managed using other powers under the Principal Act, including Part 8, which relates to management and control of infectious diseases.

Subsection (3)(b) provides that the Premier may revoke a pandemic declaration at any other time if the Premier considers it appropriate to do so.

Subsection (4) requires the Premier to consult with, and consider the advice of, the Minister and the Chief Health Officer before varying, extending or revoking a pandemic declaration, recognising that a decision to vary, extend or revoke a pandemic declaration should be properly informed by public health considerations including the expert advice of the Chief Health Officer.

Subsection (5) states that there is no limit on the number of times a pandemic declaration may be extended by the Premier under subsection (1), but that the period of each extension must not be longer than 3 months. The time limit for extensions ensures that the ongoing need for a pandemic declaration is continually reassessed. The 3 month maximum period for extensions is longer than the period for which a state of emergency may be extended under the Principal Act (being 4 weeks at a time), and a pandemic declaration is not subject to an outer limit. This recognises that pandemics may occur over a long period of time and the measures enabled by a pandemic declaration may be

required for an extended period, as evidenced by the COVID-19 pandemic, which has been ongoing for nearly 2 years.

Subsection (6) provides that, without limiting subsection (1), a variation of a pandemic declaration may modify any pandemic management area specified in the declaration, including by extending the pandemic management area.

Subsection (7) requires a variation, extension or revocation of a pandemic declaration to be by written instrument.

Subsection (8) provides that the validity of a variation or extension of a pandemic declaration is not affected by the variation or extension being made on the basis that the Premier was satisfied, at the time of the variation or extension, that there was a serious risk to public health arising from a disease of pandemic potential, but the disease was a pandemic disease at that time, or vice versa. This recognises that a disease may move between being a disease of pandemic potential and a pandemic disease and vice versa at different points in time. Subsection (7) is to ensure a declaration is not rendered invalid merely because the disease was incorrectly regarded by the Premier as being one rather than the other at a particular point in time, noting a declaration can be varied or extended on the basis of a serious risk arising from either a pandemic disease or a disease of pandemic potential. Importantly, however, if it is not open to the Premier to be satisfied that the disease is a pandemic disease or a disease of pandemic potential, a declaration cannot be validly varied or extended in respect of the disease (and the declaration must be revoked under new section 165AE(3)(a)).

New section 165AF provides for matters concerning notification of the making, variation, extension or revocation of a pandemic declaration. These requirements are to ensure the public becomes aware of the making of a pandemic declaration or changes in respect of the declaration.

Subsection (1) provides that as soon as practicable after the making, variation, extension or revocation of a pandemic declaration, the Premier must cause notice of the making, variation, extension or revocation to be—

- broadcast from a broadcasting station in Victoria; and

- in the case of the making, variation or extension of a declaration, published with a copy of the declaration as made, varied or extended in the Government Gazette; and
- in the case of the revocation of a declaration, published in the Government Gazette.

Subsection (2) sets out an evidentiary presumption that production of a Government Gazette purporting to contain—

- notice of the making, variation extension or revocation of a declaration under this section is evidence of that making, variation, extension or revocation; and
- a copy of the declaration is evidence of the terms of the declaration.

New section 165AG provides for reporting obligations and procedures relating to pandemic declarations.

Subsection (1) provides that the new section applies if a pandemic declaration is made, varied, extended or revoked, the Premier must prepare a report in accordance with new section 165AG on the making, variation, extension or revocation. A report must include—

- a statement of the reasons for the making, variation, extension or revocation;
- a copy of the advice of the Minister and the Chief Health Officer in respect of the making, variation, extension or revocation; and
- if applicable, a summary of the matters set out in subsection (4) (relating to pandemic orders, public health risk powers and pandemic management powers exercised in the period described in subsection (4)).

These are important requirements to ensure accountability by ensuring the reasons for making the pandemic declaration are stated and that the advice the Premier considered in making that declaration is made available to the public.

Subsection (2) provides that, subject to subsection (3), if a House of the Parliament is sitting on the day after the pandemic declaration or the variation, extension or revocation comes into

force, the Premier must cause the report referred to in subsection (1) to be laid before that House on that day.

Subsection (3) provides that if a House of the Parliament is not sitting on the day after the pandemic declaration or the variation, extension or revocation comes into force, or for another reason it is not reasonably practicable for the report to be laid before that House on that day, the Premier must give a copy of the report to the Clerk of that House within 3 business days. This ensures the important public interest in reports being made available in a timely manner.

Subsection (5) states that if the Clerk of either House is given a copy the report, the Clerk must—

- give a copy of the report to each member of the House as soon as practicable after receiving it; and
- cause a copy of the report to be laid before the House on the next sitting day of the House.

Subsection (6) provides that a failure to comply with the requirements of new section 165AG in relation to a report concerning the making, variation, extension or revocation of a pandemic declaration does not affect the validity of the declaration, variation, extension or revocation as the case requires.

New section 165AH makes provision for the tabling of reports when Parliament is not sitting.

Subsection (1) provides that a report that is given to a Clerk of either House under new section 165AG(3)(b) or (4) is taken to have been published by order under the authority of the Parliament.

Subsection (2) states that the publication of a report under new section 165AG is absolutely privileged and the provisions of sections 73 and 74 of the **Constitution Act 1975**, and of any other enactment or rule of law relating to the publication of the proceedings of the Parliament, apply to and in relation to the publication of that report as if—

- it were a report to which those sections applied; and
- it had been published by the Government Printer under the authority of the Parliament.

Subsection (3) provides that for the purposes of new section 165AG, Parliament is not sitting when each House stands adjourned to a date to be fixed by the presiding officer of that House.

Division 3—Pandemic orders

Division 3 of new Part 8A sets out provisions relation to pandemic orders that may be made by the Minister, including—

- the power of the Minister to make a pandemic order, and matters that may be included in a pandemic order;
- to whom pandemic orders may apply;
- consultation requirements for making pandemic orders;
- variation, extension and revocation of pandemic orders;
- when pandemic orders come into force and cease being in force; and
- tabling and publication requirements for pandemic orders and associated documents.

New section 165AI(1) provides for the Minister to make orders under that section. At any time on or after the making of a pandemic declaration, the Minister may make any order under new section 165AI(1) (a ***pandemic order***) that the Minister believes is reasonably necessary to protect public health.

New section 165AI(1) is a broad and general power, recognising that the public health responses required to effectively respond to pandemic diseases and diseases of pandemic potential may be difficult to specify precisely and exhaustively, as pandemics by their nature are unpredictable and often unprecedented.

Importantly, however, the power to make pandemic orders is subject to the requirement that the Minister must believe that the order is reasonably necessary to protect public health. Critically, the Minister must, under new section 165AL, seek and have regard to the advice of the Chief Health Officer in relation to public health risks and response measures.

Subsection (2) sets out a non-exhaustive list of matters that may be included in a pandemic order. These matters supplement the general power in subsection (1) and expressly do not limit that general power. Different types of pandemics will require different types of public health responses. The list of matters in

subsection (2) is informed by some of the key public health measures that have been used to respond to the COVID-19 pandemic, but is not limited to public health measures specific to COVID-19.

Subsection (2) provides that, without limiting subsection (1), a pandemic order may include, but is not limited to, the following orders—

- An order that requires persons in a pandemic management area to be detained for the period specified in the order, if the conditions specified in the order are satisfied or in the circumstances specified in the order. Detention of persons is an important measure that may be reasonably necessary to protect public health in appropriate circumstances. The power in section 200(1)(a) of the Principal Act has been used to detain persons in a range of circumstances, including to require certain arrivals into Victoria to be detained in hotel quarantine.

The Minister may make a pandemic order specifying when persons are required to be detained, and authorised officers may then detain persons in accordance with the pandemic order under new section 165B(1)(b). Noting this is a highly restrictive power, Division 6 of new Part 8A provides for a range of special protections that apply when a person is detained by an authorised officer, including where this is done in accordance with a pandemic order. These include that an authorised officer must at least once every 24 hours review whether the continued detention of the persons is reasonably necessary to eliminate or reduce a serious risk to public health, and a person may apply for review of the detention by a Detention Review Officer under Division 6 of new Part 8A.

- An order that requires that the detention of persons in a pandemic management area be extended for the period specified in the order, if the conditions specified in the order are satisfied or in the circumstances specified in the order. The detention of a person may be required to be extended in certain circumstances, for example if a person refuses to undergo a medical examination

or test (this is provided for specifically in new section 165AI(4)).

- An order that restricts movement in a pandemic management area. Like the power in section 200(1)(b) of the Principal Act, this power authorises restrictions on movement short of detention, for example limiting the circumstances in which persons may leave their residential premises, or restricting movement to certain areas.
- An order that requires movement in, into or from a pandemic management area. This could support, for example, orders to evacuate an area.
- An order that prevents or limits entry to a pandemic management area. The power to prevent entry is similar to the power in section 200(1)(c) of the Principal Act.
- An order that prohibits or regulates public or private gatherings in a pandemic management area. For example, restrictions may limit the number of persons that may participate in a social gathering in a person's home, a workplace or in a public place.
- An order that requires the use of personal protective equipment in a pandemic management area. The definition of *personal protective equipment*, to be inserted by clause 4(1) of the Bill, provides that personal protective equipment includes, but is not limited to, facial coverings.
- An order that prohibits or regulates the carrying on of activities, businesses or undertakings in a pandemic management area. This may be used, for example, to restrict non-essential businesses from operating or being open to the public in order to limit transmission of a disease.
- An order that requires the provision of information (including information about the identity of any person), the production of documents or the keeping of records. For example, a person might be required to provide information as a condition of participating in an activity or being at a place or entering an area.

- An order that requires medical examination or testing of persons in a pandemic management area or as a condition of entry to a pandemic management area. For example, an order might require international arrivals to be tested for a pandemic disease on arrival or at specified times after arrival into a pandemic management area.
- That requires the quarantining, destruction or other management of disease vectors in a pandemic management area. Clause 4 of the Bill inserts a definition of *disease vector* into section 3(1) of the Principal Act. A disease vector means an animal other than a human being, including a bird or insect, that is capable of carrying a pathogen that is transmissible to human beings and is capable of causing disease in human beings. In the case of a zoonotic disease, controls may need to be imposed in relation to the management of disease vectors to limit the transmission of the disease to humans.

A note following subsection (2) clarifies that a person can be detained in the exercise of a pandemic management power, including the power under new section 165B(1)(b) to detain a person in accordance with a pandemic order that requires the detention of the person.

Subsection (3) provides that a period of detention specified in a pandemic order must not exceed the period that the Minister believes is reasonably necessary to eliminate or reduce a serious risk to public health. This is an important protection to ensure persons are not detained for a longer period than is reasonably necessary. Additionally, an authorised officer must at least once every 24 hours review whether the continued detention of the persons is reasonably necessary to eliminate or reduce a serious risk to public health, and a person may apply for review of the detention by a Detention Review Officer under Division 6 of new Part 8A.

Subsection (4) provides that the reasons for making a pandemic order that extends a period for which persons are detained may relate to a refusal or failure to comply with a requirement to undergo a medical test or medical examination. For example, testing for a pandemic disease may be required towards the end of a period of detention. If a person refuses to undergo this test,

it may not be possible to ascertain if the person is infected with the disease and may be infectious. It may therefore be reasonably necessary for the person to continue to be detained until the infectious period has passed.

New section 165AJ provides that a pandemic order has effect despite anything to the contrary in any subordinate instrument, other than a subordinate instrument made under the Charter of Human Rights and Responsibilities. This ensures that a pandemic order prevails to the extent of any inconsistency.

New section 165AK specifies to whom a pandemic order may apply.

As provided for in subsection (1), a pandemic order may be expressed to apply to all persons, or to specified classes of person, or to specified persons. As pandemic orders will be the key instrument setting out public health measures during a pandemic or in response to a disease of pandemic potential, it is intended that they may be of wide or general application.

As provided for in subsection (2), a pandemic order must not be expressed to apply to a single named individual (being a natural person). In contrast, authorised officers have pandemic management powers that may be used to direct or impose requirements on named individuals. Subsection (2) does not prevent a pandemic order from being expressed to apply to (or imposing duties on) a statutory office holder.

Subsection (3) specifies a number of ways, without limiting subsection (1), in which a pandemic order may be expressed to differentiate or vary in its application between persons or classes of person. A pandemic order may identify and differentiate between, or vary in its application to, persons on the basis of one or more of the following—

- their presence in a pandemic management area or a particular location in a pandemic management area;
- their participation in or presence at an event;
- an activity that they have undertaken or are undertaking;
- their characteristics, attributes or circumstances.

While subsection (3) clarifies that pandemic orders may differentiate between persons on these bases, all pandemic orders are subject to the requirement that the Minister must believe the

order is reasonably necessary to protect public health. The differentiated application of pandemic orders between persons must therefore be relevant to the protection of public health.

Subsection (4) provides that *attribute*, as used in subsection (3), can include an *attribute* as defined in the **Equal Opportunity Act 2010** and a pandemic order is an enactment for the purposes of section 75(1)(b) of that Act. This clarifies that a person taking actions to comply with a pandemic order or that are otherwise authorised by a pandemic order is not engaging in prohibited discrimination for the purposes of the **Equal Opportunity Act 2010**.

New section 165AL provides for consultation and matters that may be taken into consideration in the making of a pandemic order.

Subsection (1) requires the Minister to, prior to making a pandemic order, request the advice of the Chief Health Officer in relation to the serious risk to public health posed by the disease specified in the pandemic declaration to which the proposed pandemic order relates, and to the public health measures that, in the opinion of the Chief Health Officer, are necessary or appropriate to address this risk. This is an important obligation to ensure that pandemic orders are properly informed by consideration of the expert public health advice of the Chief Health Officer. The Chief Health Officer's advice may be provided orally or in writing. Advice must be requested in relation to the matters specified in subsections (1)(a) and (1)(b), but otherwise the form and content of the advice is not specified, noting advice may need to be requested and provided urgently to respond to a fast-moving pandemic disease or disease of pandemic potential.

Subsection (2)(a) requires that the Minister, in making a pandemic order, have regard to the advice of the Chief Health Officer referred to in subsections (1)(a) and (1)(b). This is an important precondition to the exercise of the power to make pandemic orders. While the Minister is not obliged to follow or act in accordance with the advice, the Minister is required to have regard to that advice by giving proper, genuine and realistic consideration to that advice when making a pandemic order.

Subsection (2)(b) provides that the Minister may have regard to any other matter the Minister considers relevant including, but not limited to, social and economic matters. This recognises that the restrictions imposed by pandemic orders may have significant social and economic consequences, and that it is appropriate for the Minister to be permitted to consider broader matters in making a pandemic order.

Subsection (3) provides that the Minister may consult any other person they consider appropriate before making a pandemic order. Such consultation may be undertaken to inform the Minister on any matter the Minister considers relevant in making a pandemic order.

New section 165AM sets out additional matters relating to pandemic orders.

Subsection (1) provides that pandemic orders must be in writing and must specify—

- the day on which and time when it comes into force;
- the period for which it continues to be in force; and
- that refusal or failure to comply with the order without a reasonable excuse is an offence.

Subsection (2) provides that pandemic orders may be expressed to apply in, or in relation to, the whole or a specified part of a pandemic management area.

Subsection (3) provides that a pandemic order—

- may be of general or specially limited application;
- may differ according to time, place or circumstance;
- may leave any matter or thing to be determined, applied, dispensed with or regulated by a specified person or specified class of persons;
- may provide for exemptions from the pandemic order;
- may apply, adopt or incorporate certain matters;
- may confer powers or impose duties in connection with the pandemic order on a specified person or class of persons;

- may make provisions for and in relation to permits and matters relating to permits;
- may include transitional and saving provisions; and
- may provide for matters or things incidental to the making of a pandemic order.

These provisions provide for flexibility and clarity in how pandemic orders may apply or be expressed, and in how they are operationalised noting pandemic orders may regulate a wide range of matters. For example, a pandemic order could—

- leave certain matters to be decided by the Chief Health Officer;
- enable authorised officers or other persons to determine exemptions from pandemic orders;
- establish a permit system for the purposes of entry into a pandemic management area;
- confer powers or impose duties on the Service Victoria CEO in relation to the collection of information for the purposes of a pandemic order.

New section 165AN provides that a pandemic order is in force on a day and at the time specified in the order and ceases to be in force at the end of the period specified in the order, or when the order is revoked, or when the pandemic declaration ceases to be in force.

New section 165AO provides for varying, extending or revoking a pandemic order. The Minister is required to request the advice of the Chief Health Officer before varying, extending or revoking a pandemic order, other than with respect to a variation to a pandemic order that corrects a defect, mistake or omission. As with the making of a pandemic order, the Minister is required to have regard to the advice of the Chief Health Officer given in response to such a request and may have regard to any other matter the Minister considers relevant, and consult any other person the Minister considers appropriate.

New section 165AP requires the publication of a pandemic order and various associated documents. These are important requirements to ensure transparency and accountability and to

ensure the public is able to understand the reasons for requirements imposed under a pandemic order.

Subsection (1) requires a pandemic order, or a variation, extension or revocation of a pandemic order, to be published on the Pandemic Order Register established under new section 165CS before the order or the variation, extension or revocation comes into force.

Subsection (2) requires the following associated documents to also be published on the Department of Health Internet site within 14 days after a pandemic order or a variation, extension or revocation of a pandemic order comes into force—

- a copy of, or a written record of, the advice given by the Chief Health Officer in relation to the making, variation, extension or revocation of the order (as the case may be);
- a statement of reasons for the making, varying, extension or revocation of the order;
- an explanation of the human rights that are protected by the Charter of Human Rights and Responsibilities that are or may be limited by the order and how any such limitations are demonstrably justified.

Subsection (3) provides that publication is only required once for associated documents that relate to more than one pandemic order that is made, varied, extended or revoked on the same day.

Subsection (4) makes provision for the making of a written record of advice for advice that is provided in writing (noting this may involve a number of separate documents) and advice that is provided orally.

Subsection (5) provides that the publication requirements do not apply where a variation is made to a pandemic order only for the purpose of correcting a defect, mistake or omission, but the Minister must publish a statement certifying that the variation was for this purpose.

Subsection (6) provides that a failure to comply with a publication requirement does not affect the validity of the pandemic order or the variation, extension or revocation, as the case requires.

New section 165AQ makes provision for the tabling in Parliament of a pandemic order and associated documents. This is another important measure to ensure pandemic orders are made available to Parliament, including to ensure they can be scrutinised by the Scrutiny of Acts and Regulations Committee under Division 4 of new Part 8A.

Subsection (1) requires the Minister to ensure that, within 6 sitting days after a pandemic order or a variation, extension or revocation of a pandemic order comes into force, a copy of the pandemic order or the instrument of variation, extension or revocation (as the case requires), and the associated documents required to be published under new section 165AP(2), is laid before each House of Parliament.

Subsection (2) provides that a failure to comply with this requirement does not affect the validity of the pandemic order or the variation, extension or revocation as the case requires. However, as noted following the subsection, the Scrutiny of Acts and Regulations Committee may report this failure to comply under new section 165AS, which is a precondition for disallowance under new section 165AU.

New section 165AR provides that after the making, variation, extension or revocation of a pandemic order, the order as made, varied or extended, or the instrument of revocation, must be gazetted—

- in the next general edition of the Government Gazette; or
- in a special edition of the Government Gazette within 10 working days after the making, variation, extension or revocation.

Division 4—Scrutiny, suspension and disallowance of pandemic orders

Division 4 of new Part 8A enhances oversight of decision-making and promotes accountability by providing mechanisms for the scrutiny, suspension and disallowance of pandemic orders and instruments that extend, vary or revoke a pandemic order (from here on in referred to as "pandemic order modification instruments"). Division 4 provides that the Scrutiny of Acts and Regulations Committee may review a pandemic order modification instrument and may make recommendations for the

amendment or disallowance of the pandemic order or pandemic order modification instrument, and enables the disallowance of a pandemic order or a pandemic order modification instrument following approval of both Houses of the Parliament.

New section 165AS enables the Scrutiny of Acts and Regulations Committee to provide a report proposing that a pandemic order or pandemic order modification instrument is suspended and this suspension comes into effect 7 days after the report is sent to the Governor in Council; however, the Governor in Council may prevent the suspension coming into effect by declaring by Order within 7 days of receiving the report that the pandemic order or pandemic order modification instrument is not suspended.

New section 165AU provides for the disallowance of a pandemic order by a resolution passed by both Houses of the Parliament, only in circumstances where the Scrutiny of Acts and Regulations Committee has first either made a report to Parliament recommending disallowance or reported to Parliament that there was a failure to comply with new section 165AQ, which requires a pandemic order or pandemic order modification instrument, and their associated documents, including the advice of the Chief Health Officer given to the Minister, a statement of reasons for the pandemic order or pandemic order modification instrument and a report in relation to the Charter of Human Rights and Responsibilities, to be laid before each House of Parliament within 6 sitting days after the pandemic order or pandemic order modification instrument comes into force.

A resolution of disallowance initiated on the own motion of a Member of Parliament without meeting the precondition of the Scrutiny of Acts and Regulations Committee having provided to the Houses of Parliament a relevant report as described will not have legal effect.

New section 165AV sets out the effect of disallowance by both Houses of the Parliament on the disallowed pandemic order, part of a pandemic order or pandemic order modification instrument.

Subsection (1) provides that a disallowed pandemic order or part of a pandemic order ceases to be in force as if it were revoked.

Subsection (2) provides for the revival of a pandemic order or part of pandemic order that was varied by a disallowed instrument that varies the pandemic order, from the point in time the instrument is disallowed by both Houses of the Parliament.

The pandemic order or part is restored to as it was before the disallowed instrument varied it.

Subsection (3) provides for the revocation of a pandemic order or part of pandemic order that was extended by a disallowed instrument that extends the pandemic order or part, from the point in time the instrument is disallowed by both Houses of the Parliament.

Subsection (4) provides for the revival of a pandemic order or part of pandemic order that was revoked by a disallowed instrument that revoked the pandemic order or part, from the point in time the instrument is disallowed by both Houses of the Parliament.

New section 165AV(5) requires that a notice of a disallowance must be published in the Government Gazette.

Division 5—Pandemic management powers

New section 165AW enables the Chief Health Officer to authorise authorised officers or classes of authorised officers to exercise public health risk powers and pandemic management powers if a pandemic declaration is in force and the Chief Health Officer believes that the authorisation is reasonably necessary to eliminate or reduce a serious risk to public health.

This new section 165AW is in contrast to new section 165CO, which limits the public health risk powers that authorised officers appointed under section 165CN may be authorised by the Chief Health Officer to exercise. These authorised officers include, among others, police officers and Worksafe inspectors within the meaning of the **Occupational Health and Safety Act 2004**.

New section 165AX provides for the form of the authorisations that the Chief Health Officer may give. An authorisation may be oral or in writing and must describe the serious risk to public health to which it relates, that is, the risk to public health which the Chief Health Officer believes the authorisation is reasonably necessary to eliminate or reduce. The authorisation must specify any restrictions or limitations that apply to the exercise of the powers covered by the authorisation.

New section 165AY clarifies that the Chief Health Officer may extend the period of time for which an authorisation of an authorised officer continues in force. This provision requires that an authorisation cannot continue in force beyond the period of

operation of a pandemic declaration, reflecting that the authorisation power is only enlivened during the period in which a pandemic declaration is in force. This means an existing authorisation could be extended by a further authorisation. Alternatively, noting that new section 165AX(3)(e) requires that an authorisation must specify the period of time for which the authorisation continues in force, an authorisation may be expressed to be in effect for a specified period and for the operation of the authorisation to extend to be in effect during extensions of the period of time of the operation of the pandemic declaration.

New section 165AZ provides that, whilst a pandemic declaration is in force, an authorised officer who is authorised by the Chief Health Officer may, subject to the limitations or requirements of their authorisation, exercise any of the public health risk powers or the pandemic management powers.

New sections 165B and 165BA set out, respectively, the pandemic management order powers and the pandemic management general powers, which collectively are the pandemic management powers that may be exercised by an authorised officer who has been authorised to exercise the powers under an authorisation given by the Chief Health Officer under new section 165AW.

New section 165B sets out the pandemic management order powers, which generally are powers related to giving effect to a pandemic order. The first pandemic management order power is the power to take action or give a direction, other than to detain a person, that the authorised officer believes is reasonably necessary to implement or give effect to a pandemic order. This power reflects a key role authorised officers have in implementing pandemic orders, including by limiting non-compliance with pandemic orders of wide application made by the Minister. The second pandemic management order power is the power to detain a person in accordance with a pandemic order that requires the detention or extension of detention of a person. Such an order may be made where the Minister believes it is reasonably necessary to protect public health, and must specify the period of detention not exceeding the period the Minister believes is reasonably necessary to eliminate or reduce the serious risk to public health. In exercising this power an authorised officer does not have to separately reach a requisite

state of mind to detain a person (provided the detention is in accordance with the pandemic order), reflecting the necessary role "on the ground" role that authorised officers have in detaining persons, which in certain circumstances may involve detention of groups of people required to be detained under a pandemic order.

New section 165BA sets out the pandemic management general powers, which generally are residual powers to be exercised by an authorised officer complementary to the scope of directions given, and regulation of activity achieved, through pandemic orders made by the Minister. The first pandemic management general power is the power to take action or give a direction, other than to detain a person, that an authorised officer believes is reasonably necessary to protect public health. The second pandemic management general power is the power to detain a person in a pandemic management area if for the period the authorised officer believes it is reasonably necessary to eliminate or reduce a serious risk to public health for the purpose of that detention. This power allows an authorised officer to detain a person in a pandemic management area for the period reasonably necessary to eliminate or reduce a serious risk to public health in circumstances that are not covered or contemplated by a pandemic order by the Minister.

Subsection (2) provides, without limiting the scope of the pandemic management general powers, a non-exhaustive list of the directions that an authorised officer could give and clarifies that such directions may be written or oral.

Directions may, for example—

- restrict movement in a pandemic management area; or
- require movement in, into or from a pandemic management area, such as to direct a person away from a location where a disease vector or other serious threat to public health may be present; or
- prevent or limit entry to a pandemic management area, such as in implementing border controls; or
- require a person to refrain from organising or participating in a gathering in a pandemic management area; or

- require the use of personal protective equipment (including facial coverings) in a pandemic management area; or
- require a person to refrain from carrying on activities, businesses or undertakings, or to carry them on in a specified manner in a pandemic management area, which may include activities or undertakings that are not commercial in nature; or
- require the provision of information (including information about the identity of any person), the production of documents, or the keeping of records; or
- require medical examination or testing in or before entering a pandemic management area; or
- require the quarantining, destruction or other management of disease vectors in a pandemic management area.

Noting pandemic orders made by the Minister may be of general or wide application (such as applying to all persons in metropolitan Melbourne or all person in Victoria) or otherwise may apply to classes of persons, in contrast there are limitations in respect of to whom pandemic management general powers exercised by authorised officer may apply. In the exercise of a pandemic management general power to take any action or give any direction, other than to detain a person, an authorised officer is only permitted to give a direction that applies to more than one person where the directed person—

- is participating or present at an event at a particular location; or
- is undertaking a particular activity at a particular location; or
- is located in the immediate vicinity of the authorised officer or present at a particular premises and the direction relates to restricting movement, requiring movement or to limiting entry.

In each of these circumstances, it may be necessary, in an authorised officer's belief that it is reasonably necessary to protect health, to give a direction to multiple people, including groups or crowds of people. Directions may be necessary due to

a confirmed outbreak of a pandemic disease or the presence of a disease vector or the emergence of some other threat. New section 165BB requires, unless it is not practicable to do so, an authorised officer to warn the person to whom a direction is given that refusal or failure to comply with the direction, without a reasonable excuse, is an offence.

New section 165BC provides that an authorised officer may be assisted by any person in exercising a public health risk power or a pandemic management power authorised under new Part 8A. A request for assistance to be provided by a police officer must be made to the Chief Commissioner of Police or a delegate of the Chief Commissioner of Police.

Provisions relating to requests for assistance for this new section 165BC and current sections 192 and 202 of the Principal Act are in new section 227A to be inserted by clause 17 of the Bill.

New section 227B to be inserted by clause 17 of the Bill provides for assistance by police officers.

Division 5—Special protections in respect of powers of detention

New section 165BD clarifies when detention under new section 165B(1)(b) (detention in accordance with a pandemic order) or 165BA(1)(b) (detention by an authorised officer to eliminate or reduce a serious risk to public health) commences. In either case, detention commences only after the exercise of a pandemic management power by an authorised officer. There are a range of circumstances in which persons may be detained, for example detention in hotel quarantine, or detention of a group of persons within a defined geographical location or area. Detention may or may not involve a person being taken into physical custody. New section 165BD provides for a range of circumstances in which detention can commence.

The section provides that detention commences at whichever of the following times occurs first—

- the time when the person is first at a place where the person is to be detained after the exercise of the relevant power, whether or not the person is to remain at that place throughout the period of detention, or is to be transported to another place (for example, if there was

an outbreak of a pandemic disease in an apartment building and a pandemic order was made to detain ordinary residents of the building from a set time, an ordinary resident not located in the building at the set time would not be detained until such time on or after the set time that they were at the building); or

- the time when the person is first taken into the physical custody of the authorised officer exercising the pandemic management power or into the physical custody of a person assisting an authorised officer (for example, if a person is required to be taken into physical custody of an authorised officer to be taken to a place the person is required to be detained); or
- the time when an authorised officer takes an action in respect of the person, the taking of which is specified in the pandemic order as being the commencement of the detention of a person.

New section 165BE clarifies that, for the purposes of new Part 8A, a person who is required to isolate or quarantine under a pandemic order or under a direction given in the exercise of a pandemic management power is not detained for the purposes of new Part 8A merely because of the requirement to isolate or quarantine. While a requirement to isolate when a person is diagnosed with an infectious disease or to quarantine when at risk of developing an infectious disease due to potential exposure may share some similarities with detention, in that they involved restrictions on movement, a requirement to isolate or quarantine does not of itself amount to detention. However, isolation or quarantine may in some circumstances also involve detention, for example detention in hotel quarantine.

New section 165BF provides that a person detained must be given either a written notice or an explanation of the reason why the detention is necessary and a warning that refusal or failure to comply with a pandemic order or the exercise of a pandemic management power without reasonable excuse is an offence. This provision is intended to support a person to understand their detention including its terms and conditions, their rights of review and the consequences of failing to comply with the detention.

New section 165BG requires an authorised officer to facilitate any reasonable request for communication made by a person who is detained.

In addition it requires an authorised officer to, every 24 hours, unless it is not practicable, review the detention of a person. This review may be conducted by an authorised officer different to the authorised officer who detained the detained person and will help ensure that a person does not continue to be detained unless it is reasonably necessary to eliminate or reduce a serious risk to public health.

New section 165BH requires authorised officers to provide written notices to the Chief Health Officer about the exercise of pandemic management powers that involve detention.

Such notices shall include advice on persons detained or continuing to be detained, reviews of detention and reasons for detention.

In addition, the Chief Health Officer is to advise the Minister that a person has been detained or following a review, continues to be detained, the name of the person being detained and a brief statement as to the reason why the person is detained or continues to be detained.

This section will support proactive and—responsive decision-making for the purposes of preventing and managing the outbreak or spread of pandemics and diseases of pandemic potential.

New section 165BI enables a person detained or whose detention is extended to make an application to the Secretary for a review of their detention by a Detention Review Officer.

The Public Health and Wellbeing Amendment (State of Emergency Extension) Act 2021 introduced a mechanism for persons subject to detention under the exercise of the emergency power in section 200(1)(a) of the Principal Act to apply for a review of a detention decision by a Detention Review Officer. Detention Review Officers are appointed under section 32A of the Principal Act and must be lawyers of 10 years' experience and employed under Part 3 of the **Public Administration Act 2004**.

The new detention review mechanism for the purposes of new Part 8A will operate similarly to the current detention review mechanism in Division 3 of Part 10 of the Principal Act.

New section 165BI(1) provides that a detained person may apply to the Secretary for review of their detention by a Detention Review Officer including, without limitation, in relation to the following—

- the reasons for the detention;
- the period of the detention;
- the place of the detention;
- the conditions of the detention;
- any other matter relation to the detention.

New section 165BI(2) provides that a person who has had an application for review determined may make a further application if, since that determination, new and materially different circumstances have arisen that affect the person in relation to their detention. These circumstances could include those that existed at the time that the application for review was determined but have since substantially worsened or otherwise changed.

New section 165BJ sets out how a Detention Review Officer must decide an application for review of a person's detention.

Subsection (2) provides that the Detention Review Officer to whom the application is referred must use their best endeavours to decide the application in a timely manner, and advise the applicant in writing of the decision and the reasons for it.

Subsection (4) provides that the Detention Review Officer may decide not to vary the person's detention or to refer the application to the Chief Health Officer. Such a referral can, but does not have to, include any non-binding recommendations the Detention Review Officer considers appropriate.

Subsection (5) requires the Detention Review Officer to advise an applicant if their application is referred to the Chief Health Officer.

New section 165BK requires the Chief Health Officer to use their best endeavours to determine decisions on detention review applications in a timely manner.

New section 165BL provides that where a person's detention ceases because of a decision made on the review of their detention, that detention is not deemed to have been unlawful merely because of the decision made on the review.

New section 165BM enables the Minister to make and publish guidelines and standards for the welfare of persons detained. These guidelines and standards may relate to matters including the provision of psychological support to a detained person and maintenance of contact with other persons. The Minister is to consult the Chief Health Officer before making such guidelines or standards. A person who performs functions and exercises powers under the Principal Act must have regard to any guidelines and standards. Furthermore, to the extent that a standard is not inconsistent with a pandemic order, a person that performs functions or exercises powers under the Principal Act must do so in compliance with the standard. New section 165BM(6) provides that if the Minister makes a pandemic order that is inconsistent with a guideline or a standard, the Minister must explain the reasons for the inconsistency.

Division 6—Offences, penalties and related matters

New section 165BN specifies that it is an offence to refuse or fail to comply with a pandemic order or a direction given to the person, or a requirement made of the person, in the exercise of a pandemic management power.

The maximum penalty in the case of a corporation is 600 penalty units and 120 penalty units in the case of a natural person.

A person is not guilty of the offence if the person had a reasonable excuse for refusing or failing to comply.

New section 165BO introduces a new aggravated offence, which specifies that it is an offence if a person fails to comply with a pandemic order, or with a direction given to the person, or a requirement made of the person, in the exercise of a pandemic management power, and the person knows or ought to know that the failure to comply is likely to cause a serious risk to the health of another individual.

The maximum penalty in the case of a corporation is 2500 penalty units or a fine related to the commercial benefit obtained from the offence determined in accordance with

section 617. The maximum penalty for a natural person is 500 penalty units or up to 2 years imprisonment.

Subsection (2) provides a defence to the offence if the person had a reasonable excuse for failing to comply.

Subsection (3) defines *serious risk to the health of an individual*. This definition replicates the definition of *serious risk to public health* given in section 3 of the Principal Act with one key difference. *Serious risk to public health* includes "the number of persons likely to be affected" as a relevant matter, and refers to the health of multiple individuals. The definition of *serious risk to the health of an individual* set out in new section 165BO(3) omits the number of persons as a relevant matter, and refers to an individual. This distinction means that a person could be guilty of an offence against new section 165BO(1) in circumstances where (provided all other elements are also present) their failure to comply is likely to cause a material risk that substantial injury or prejudice occurs to just one other person.

This aggravated offence is intended to cover non-compliance in egregious circumstances where there is an aggravating factor of the person knows, or having ought to have known, that the non-compliance is likely to cause a serious risk to at least one other individual. For example, the conduct of a person who knows they are infected with an infectious disease attending their place of work in contravention of requirements to isolate and stay at home may amount to commission of the aggravated offence. Similarly, the conduct of a business failing to comply with safety protocols and other directions given in order to limit the spread of a pandemic disease and actively encouraging non-compliance by customers may amount to an aggravated offence. The offence is not intended to apply to minor or routine breaches that do not create a serious risk to the health of an individual, such as minor breaches of face mask requirements, and is not intended to be used as a tool to manage peaceful protests.

New section 165BP enables a court to make a penalty order against a body corporate found guilty of an offence against section 165BO(1) and sets out the method for determining the penalty amount imposed in such an order. It enables a court to consider the estimated gross commercial benefit obtained by a body corporate from the commission of the aggravated offence in section 165BO(1). This order is a deterrent for this serious

offence and made at the discretion of a court, on application by the prosecutor.

New section 165BQ provides that if a judge of a court is not satisfied that a person committed an offence against new section 165BO (aggravated offence), but is satisfied that the person committed the less serious offence against new section 165BN, the court may alternatively find the person not guilty of the offence charged but guilty of the less serious offence, and liable to be punished accordingly.

Division 7—Information sharing

New section 165BR clarifies that the Secretary and the Chief Health Officer may collect, hold, manage, use, disclose or transfer information for the purposes of new Part 8A.

New section 165BS clarifies that the disclosure or transfer of personal information or health information authorised or required by new Part 8A is deemed to be authorised or required by law for the purposes of the **Privacy and Data Protection Act 2014** and the **Health Records Act 2001**. These Acts establish information privacy and protective data security schemes for the Victorian public sector and permit use and disclosure of information in certain circumstances where the use or disclosure is required, authorised or permitted under law.

New section 165BT provides that the Minister may apply to the Information Commissioner for a determination in relation to an act or practice of an organisation that contravenes or may contravene an Information Privacy Principle or approved code of practice or Health Privacy Principle. The application must specify—

- the act or practices to which the determination would apply;
- the persons or organisations to which the determination would apply to;
- the relevant Information Privacy Principle or code of practice or Health Privacy Principle; and
- the reasons for seeking the determination.

The pandemic information determination may relate to personal information or health information or both. The information may be collected, held, managed, used, disclosed or transferred for the purposes of new Part 8A.

New section 165BU provides that the Information Commissioner may make a pandemic information determination where the Commissioner considers that the public interest in the organisation doing the act or engaging in the practice to which the determination would apply substantially outweighs the public interest in complying with the relevant Information Privacy Principle, approved code of practice or Health Privacy Principle.

New section 165BV provides that the effect of a pandemic information determination is that the persons or organisations to which the determination applies are not required to comply with the relevant Information Privacy Principle, approved code of practice or Health Privacy Principle to the extent specified in the determination.

New section 165BW provides that a pandemic information determination has effect from the day of publication until it expires or is revoked.

New section 165BX explains the process for variation of a pandemic information determination and identifies that the Information Commissioner must have regard to whether the variation would be in the public interest.

Subsection (1) provides that the Minister may apply to the Information Commissioner for the variation of a pandemic information determination.

Subsection (2) provides that the Information Commissioner may approve the proposed variation if the Information Commissioner considers it appropriate to do so (subject to subsection (3)).

Subsection (3) provides that, in deciding whether to approve a variation to a pandemic information determination, the Information Commissioner—

- must have regard to whether or not the variation would be in the public interest; and

- must have regard to the objective of the Principal Act, the objective of new Part 8A, the **Privacy and Data Protection Act 2014** and the **Health Records Act 2001**; and
- may have regard to any other matter the Information Commissioner considers relevant.

New section 165BY explains the circumstances in which a pandemic information determination must be revoked by the Information Commissioner.

New section 165BZ sets out the procedural requirements to be met before variation or revocation of a pandemic information determination, which includes consideration of submissions and consultation requirements.

New section 165C requires publication on an Internet site maintained by the Information Commissioner within 14 days of a pandemic information determination being made, varied or revoked, as well as publication of a statement of reasons and any comments made by the Health Complaints Commissioner.

Division 8—Safeguards for contact tracing information

New section 165CA provides that the objectives of Division 8 of new Part 8A are to—

- safeguard information about individuals, and certain other information that forms part of a contact tracing system;
- to provide a strong legislative framework in order to maintain the Victorian community's confidence in the safeguards that apply to the use and disclosure of such information.

This safeguarding scheme is introduced in the context of uncertainty and disputes over the boundaries protecting information collected for the purposes of contact tracing in managing outbreaks during the COVID-19 pandemic. Such information has been collected under emergency powers in extraordinary circumstances while justifiably limiting the right to privacy, across all Australian jurisdictions. As this information is collected for the primary purpose of managing the threat of harm posed by the COVID-19 pandemic, this safeguarding scheme is intended to protect against use or disclosure for unjustifiable

purposes, in a similar way to how the Protection of Information (Entry Registration Information Relating to COVID-19 and Other Infectious Diseases) Act 2021 of Western Australia was introduced to protect entry registration information.

The provisions contained in Division 7A make clear that the safeguarding provisions do not apply to contact tracing in relation to other diseases that are not the subject of a pandemic declaration.

New section 165CB defines the key terms used in Division 8 of new Part 8A.

Subsection (1) defines ***contact tracing information*** to mean information forming part of a contact tracing system established for contact tracing purposes in relation to a pandemic disease or a disease of pandemic potential and includes recorded information about a person whose identity is apparent, or can reasonably be ascertained, from the information, as well as information collected by a digital visitor registration system for contact tracing purposes, whether or not an individual's identity can be reasonably ascertained from the information. This definition is intended to provide sufficient clarity about the information to be safeguarded by the safeguarding scheme, which may include QR code data and paper copy information relating to recording entries into premises, notes and information recorded from contact tracing interviews, and information collected for permits for cross-border travel. The provisions contained in Division 7A will not apply to information forming part of contact tracing systems for diseases that are not subject to a pandemic declaration, including if that information was provided in relation to a disease that subsequently becomes the subject of a pandemic declaration.

Subsection (2) clarifies that a system is established for ***contact tracing purposes*** if under the system, information is collected, held, used, disclosed, managed and transferred by entities and individuals for the purposes of identifying, notifying or communicating with entities or individuals about one or more individuals who are, may be, or have been, infected with a pandemic disease or disease of pandemic potential or had or may have had contact with such an individual.

New section 165CC specifies that it is an offence to use or disclose contact tracing information without authorisation. The maximum penalty for a natural person is 60 penalty units and in the case of a corporation is 300 penalty units.

New section 165CD provides that the authorised purposes for which a person may use or disclose contact tracing information—

- for a public health purpose; or
- in the performance of functions or the exercise of powers under new Part 8A; or
- for a permitted purpose, which is if consent is obtained for the use or disclosure; or there is an imminent threat to the life, health, safety or welfare of at least one individual; or to investigate or prosecute the offence under new section 165CC (unauthorised disclosure of contact tracing information) contained or the offence under section 210 (provision of false or misleading information, statement or document).

Division 9—Independent Pandemic Management Advisory Committee

New section 165CE(1) imposes a requirement on the Minister to establish, within 30 days after the first extension of a pandemic declaration, an advisory committee, to be known as an Independent Pandemic Management Advisory Committee, for the purposes of providing advice in relation to managing the pandemic disease or disease of pandemic potential to which the pandemic declaration relates.

Subsections (2)–(7) set out procedures and arrangements for appointment of members of the Independent Pandemic Management Advisory Committee, including that appointments by the Minister must be done under consultation with the Chief Health Officer. The Minister must ensure as far as reasonably practicable that in considering and making appointments, membership of the Independent Pandemic Management Advisory Committee must collectively have skills, knowledge and experience in matters relevant to the response to, and management of, a pandemic disease or disease of pandemic potential, including in relation to matters of public health, infectious diseases, primary care, emergency care, critical care, law, human rights, the interests and needs of traditional owners

and Aboriginal Victorians and the interests and needs of vulnerable communities, which may include communities where persons experience or are at risk of disadvantage or susceptibility due to social disadvantage, cultural factors, homelessness or family violence.

New section 165CF provides that the functions of the Independent Pandemic Management Advisory Committee are to review and provide advice in relation to the exercise of powers under new Part 8A and prepare and provide reports to the Minister including making non-binding recommendations.

The Independent Pandemic Management Advisory Committee must advise on matters further to the Minister's requests. Otherwise, the Independent Pandemic Management Advisory Committee is not subject to the direction or control of the Minister.

New section 165CG requires the tabling in both Houses of the Parliament of all reports by the Independent Pandemic Management Advisory Committee to the Minister.

Division 10—Matters relating to the interaction between a state of emergency and a pandemic

Division 10 of new Part 8A applies if a pandemic declaration comes into force in relation to an infectious disease or an infectious agent which is the subject of a state of emergency declaration and provides arrangements for the seamless transition of authorisations, directions and exercises of power to avoid any regulatory gap in moving from the state of emergency scheme to the pandemic management scheme.

New section 165CH provides that a declaration of a state of emergency ceases to be in force in relation to any emergency area (or part of an emergency management area) that is, or is within, the pandemic management area described in a pandemic declaration made in respect of the same infectious disease to which the state of emergency declaration pertains. If there are areas outside the pandemic management area that are within the emergency area under the state of emergency declaration, the state of emergency declaration continues to be in force in those areas. For example, if a state of emergency applied to the whole of Victoria in relation to an infectious disease, if a pandemic declaration was made in respect of that infectious disease to apply to the pandemic management area identified as

metropolitan Melbourne, then the state of emergency declaration would continue to apply to all areas of Victoria outside of metropolitan Melbourne.

New section 165CI continues the authority of authorised officers to exercise powers despite a pandemic declaration applying instead of a state of emergency declaration.

New section 165CJ provides that despite a pandemic declaration applying instead of a state of emergency declaration, directions given by the Chief Health Officer under powers exercised under the state of emergency declaration are deemed to be pandemic orders. This provision will ensure continuity of directions regulating and restricting activity that may apply on a wide scale.

New section 165CK provides for the continuation of directions made and other actions taken by authorised officers (other than the Chief Health Officer), except for those relating to detention, despite a pandemic declaration applying instead of a state of emergency declaration.

New section 165CL provides that a person detained following the exercise of powers under a state of emergency continues to be detained under a pandemic declaration as if they were detained under a pandemic management power under new section 165B(1)(b) or 165BA(1)(b) of the Principal Act.

Subsections (2) to (5) provide that applications for the review of detention not determined prior to the commencement of a pandemic declaration are to be referred or determined under provisions in Part 8A of the Principal Act.

Subsection (6) clarifies that a period of time related to detention and applications for the review of detention continues to apply despite a pandemic declaration applying instead of a state of emergency declaration. That is, a period of detention determined under the exercise of emergency powers would continue when a pandemic declaration applies, rather than recommencing when a state of emergency declaration ceases.

New section 165CM saves decisions not to detain a person despite a pandemic declaration applying instead of a state of emergency declaration.

New section 165CN provides that, in addition to the persons who may be appointed under section 30(1) of the Principal Act, the Secretary by instrument may appoint certain other persons when

a pandemic declaration is in force. The additional persons that may be appointed as authorised officers for the purpose of the Principal Act include any person the Secretary considers appropriate for appointment based on the person's skills, attributes or experience; police officers; protective services officers; Worksafe inspectors; public sector employees of any other State or any territory; and designated health service providers. This new section 165CN continues the effect of section 250 of the Principal Act introduced by the **COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020**, which empowers the Secretary to appoint a wider range of persons as authorised officers. This temporary provision is to be repealed on 16 December 2021 and the replication and extension of this power under new section 165CN reflects the need for the availability of a power to appoint specified types of persons as authorised officers to exercise limited powers to assist with the response to, and management of, the widespread serious risk to health posed by a pandemic disease or disease of pandemic potential.

New section 165CO provides for the authorisation of powers of authorised officers appointed under new section 165CN, which are limited depending on that category of person appointed as an authorised officer.

Subsection (1) retains the limitations on the powers that may be conferred on authorised officers contained in section 250A of the Principal Act (which was also inserted by the **COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020** and otherwise is repealed on 16 December 2021).

Division 11—Other matters

New section 165CP clarifies that, unless a contrary intention is expressed, the powers under new Part 8A are in addition to any other powers conferred by or under the Principal Act.

New section 165CQ provides that if a pandemic order and a direction given by an authorised officer are inconsistent, the pandemic order prevails to the extent of the inconsistency.

New section 165CR provides that pandemic declarations, pandemic orders, the exercise of pandemic management powers, pandemic information determinations and detention standards or guidelines are not legislative instruments for the purposes of the

Subordinate Legislation Act 1994. New Part 8A does, however, provide for procedural and review requirements similar to the tabling and publication requirements under Part 3A and scrutiny, suspension and disallowance measures under Part 5A of the **Subordinate Legislation Act 1994**.

New section 165CS requires the Minister to establish a public register of pandemic orders together with documents applied, adopted or incorporated, to be called the Pandemic Order Register. The purpose of requiring the Pandemic Order Register is to increase accessibility to the law, recognising that pandemic orders may apply widely in Victoria in relation to a vast range of activities and that pandemic orders may be frequently amended or replaced in response to emerging, developing or changing threats to public health and wellbeing. The documents in the Pandemic Order Register will be an authoritative and centralised source of historical as well as current pandemic orders and their associated documents. The Pandemic Order Register is required to contain all pandemic orders as in force from time to time, which will require updated versions of Pandemic Orders to be published if a pandemic order or part of a pandemic order is varied or extended or affected by disallowance of a part of a pandemic order or an instrument that varies, extends or revokes a pandemic order.

New section 165CT excludes the application of section 32 of the **Interpretation of Legislation Act 1984** so far as they relate to the incorporation of another pandemic order in a pandemic order.

The obligation to keep an incorporated document for inspection (under section 32(3)(b) and (4)(c) of the **Interpretation of Legislation Act 1984**) is to be acquitted by virtue of that document being freely available on the Pandemic Order Register. The tabling and gazetting requirements under section 32 of the **Interpretation of Legislation Act 1984** are to be acquitted when each version of the incorporated document is retained on the Pandemic Order Register.

New section 165CU provides for circumstances where a limited legal liability is transferred from the Chief Health Officer, delegates of the Chief Health Officer, authorised officers and Detention Review Officers to the State, in relation to anything done or omitted to be done in good faith in the exercise of a power or discharge of a duty under new Part 8A or Part 10 or under any instrument or regulation under those Parts in the

reasonable belief that the act or omission was validly in the exercise of a power or discharge of a duty. This immunity applies to such acts or discharges of duty only at a time when a pandemic declaration is in force.

New section 165CV indicates what can be relied on as authoritative evidence in relation to instruments made under new Part 8A.

New section 165CW provides that the invalidity of a state of emergency declaration or a pandemic declaration does not affect anything done in reliance on a pandemic declaration or a state of emergency, such as an act or omission in the exercise of a power or a discharge of duty, unless the declaration was not made in good faith. This provision provides for certainty and stability for a person to exercise powers and discharge duties under a relevant declaration.

New section 165CX makes provision for a review of new Part 8A, to be arranged by the Minister and to commence no later than 2 years after the commencement of new Part 8A.

- Clause 13 amends section 189(a) of the Principal Act to enable the Chief Health Officer to authorise a specified class or classes of authorised officers to exercise the public health risk powers.
- Clause 14 amends section 199(2)(a) of the Principal Act to enable the Chief Health Officer to authorise a specified class or classes of authorised officers to exercise emergency powers.
- Clause 15 inserts new section 212A into the Principal Act.

New section 212A removes the ability to not comply with a requirement under or for the purposes of Part 8A to provide information on the basis that doing so might tend to incriminate the person or expose them to liability for a penalty. This provision allows for the abrogation of the privilege against self-incrimination, to facilitate and support the provision of information important to the prevention and management of the outbreak or spread of pandemic diseases and diseases of pandemic potential. In responding to the serious risk to public health posed by a pandemic disease or disease of pandemic potential, access to information is often time-critical and requires access to full and accurate information, particularly in relation to information used for contact tracing purposes. Although it is recognised that compelling the provision of information engages

consideration of a person's right to privacy, from the perspective of prioritising the public interest in reducing or eliminating the serious risk to public health posed by a pandemic disease or disease of pandemic potential, it is intended that an authorised officer should be empowered to compel a person to provide the requested information, without that person being in fear of being penalised or prosecuted in direct reliance on that information (except if the person provided false or misleading information). If the person provides contact tracing information, Division 8 of new Part 8A applies to that information.

To balance the abrogation of the privilege against self-incrimination, new section 212A ensures that information provided by a natural person in compliance with a requirement under or for the purposes of new Part 8A is not admissible in evidence against the person in a criminal proceeding and must not be used in any action, proceeding or process that may make the person liable to a criminal penalty, except in relation to a proceeding in respect of the provision of false or misleading information.

Clause 16 inserts new section 219A into the Principal Act.

New section 219A provides that proceedings for the aggravated offence of failing to comply with a pandemic order, direction or other requirement under new section 165BO can only be brought following approval from the Secretary or the Chief Commissioner of Police. This reflects that proceedings are only to be brought in prosecution of an aggravated offence where the alleged breach is egregious conduct

Clause 17 inserts new Division 4A in Part 11 of the Principal Act.

New section 227A provides additional detail relating to requests for assistance provided to authorised officers under new section 165BC, section 192 or section 202.

Such requests may relate generally to the exercise of powers in the context of a particular pandemic or emergency, or in relation to the exercise of particular public health risk powers, emergency powers or pandemic management powers. Where requests relate generally to the exercise of powers, they must be made by the Secretary. All other requests may be made by an authorised officer.

New section 227B sets out certain types of assistance that may be provided by police officers, if requested by an authorised officer or the Secretary. This provision does not limit sections 165BC, 192 or 202.

New section 227B provides that police officers can provide the following types of assistance can be provided by a police officer where it is reasonably necessary to assist the authorised officer in exercising a power under the Principal Act. Such assistance can include, but is not limited to—

- effecting warrantless entry to a premises, where an authorised officer has made a specific request for this form of assistance (whether or not the authorised officer is in their physical presence)
- compelling a person to provide their name, address and any other information that may assist the authorised officer; and
- using reasonable force to assist the authorised officer in exercising a power (for example, to assist with entry into premises or to assist with detaining a person who is required to be detained).

Clause 18 inserts new Division 5A of Part 11 into the Principal Act.

New section 231A enables the Secretary to make a policy to promote compliance with, and the enforcement of, the Principal Act, or specific provisions within the Principal Act.

If the Secretary makes a compliance and enforcement policy, that policy must set out options for promoting compliance with, and enforcement of, the Act or specified provisions, and must provide guidance on how persons involved in compliance and enforcement functions may or must use those options.

The policy may, but does not need to, also set out guidance on any other matters relevant to compliance and enforcement under the Principal Act.

New section 231A also provides that any person who performs a function or exercises a power under the Principal Act must have regard to any applicable compliance and enforcement policy in performing that function or exercising that power.

Clause 19 inserts new sections 248C and 248D into the Principal Act.

New section 248C continues appointments of authorised officers made under section 30(1A) of the Principal Act despite the expiry of section 250 of the Principal Act on 16 December 2021.

New section 248D provides a power for the Governor in Council to make transitional regulations consequent on the enactment of this Act.

Part 3—Amendments relating to concessional infringement scheme

Clause 20 inserts new definitions in section 3(1) of the Principal Act for the purposes of the new concessional infringement penalty scheme for pandemic-related infringement offences contained in new Part 8B, inserted by clause 21. Clause 21 sets out the following definitions—

- *attachment of debts direction*, which is defined to have the same meaning as it has in the **Fines Reform Act 2014**;
- *attachment of earnings direction*, which is defined to have the same meaning as it has in the **Fines Reform Act 2014**;
- *Director, Fines Victoria*, which is defined to mean the person employed as Director, Fines Victoria under section 4 of the **Fines Reform Act 2014**;
- *enforcement agency*, which is defined to have the same meaning as it has in the **Infringements Act 2006**;
- *fine*, which is defined to have the same meaning as it has in the **Fines Reform Act 2014**;
- *Health Privacy Principles*, which is defined to have the same meaning as it has in the **Health Records Act 2001**;
- *Information Privacy Principles*, which is defined to have the same meaning as it has in the **Privacy and Data Protection Act 2014**;
- *infringement fine*, which is defined to have the same meaning as it has in the **Infringements Act 2006**;

- *infringement penalty*, which is defined to have the same meaning as it has in the **Infringements Act 2006**;
- *land charge*, which is defined to have the same meaning as it has in the **Fines Reform Act 2014**;
- *seven-day notice*, which is defined to have the same meaning as it has in the **Fines Reform Act 2014**;
- *vehicle seizure and sale notice*, which is defined to have the same meaning as it has in the **Fines Reform Act 2014**.

Clause 21 inserts new Part 8B in the Principal Act. New Part 8B provides for a concessional infringement penalty scheme for pandemic-related infringement offences. The scheme is intended to assist affected fine recipients who are experiencing financial hardship.

New section 165CY sets out *eligible offences* and *eligible persons* for the purposes of the new concessional infringement penalty scheme.

New section 165CY(1) provides that an offence against the Principal Act or regulations made under the Principal Act in respect of a natural person will be an *eligible offence* if—

- the offence is prescribed by the regulations; and
- the commission of the offence by the natural person relates to the performance of a function or the exercise of a power in respect of a pandemic disease or a disease of pandemic potential.

New section 165CY(2) provides that a person is an *eligible person* in relation to an eligible offence if the person is determined to be an eligible person in relation to the offence under new section 165DC(1).

New section 165CZ provides for applications for a concessional penalty rate under the new concessional infringement penalty scheme for pandemic-related infringement offences.

New section 165CZ(1) provides that a natural person issued with an infringement notice in respect of an eligible offence may apply to the Director, Fines Victoria for a determination under new section 165DC(1) that they are an eligible person in respect of the eligible offence.

A note to new section 165CZ(1) states that if the Director, Fines Victoria determines under section 165DC(1) that a person is an eligible person, the infringement penalty may be reduced under new section 165DC(3).

New section 165CZ(2) provides that an application may also be made by a person acting on behalf of the person issued with the infringement notice.

New section 165CZ(3) provides that an application must—

- be in writing; and
- provide evidence that the applicant is a prescribed person or a person included in a prescribed class; and
- provide the applicant's address for service; and
- refer to the infringement notice to which the application relates; and
- include any other prescribed information.

New section 165D provides that an application must be made before any of the following occur in respect of the infringement offence to which the application relates—

- the expiry of a seven-day notice served on the person;
- the making of an attachment of earnings direction or an attachment of debts direction;
- the recording of a land charge;
- the seizing of property under a vehicle seizure and sale notice;
- payment of the infringement penalty and any fees added to the infringement penalty under the **Infringements Act 2006**, the **Fines Reform Act 2014** or any regulations made under those Acts;
- waiver of the unexpired period of a seven-day notice under section 36 of the **Sheriff Act 2009**;
- registration of the infringement penalty with the Children's Court under clause 4 of Schedule 3 to the **Children, Youth and Families Act 2005**.

New section 165DA provides that the Director, Fines Victoria may specify how any information supplied in an application under new section 845 is to be verified.

New section 165DB provides for the suspension of enforcement action if a person makes an application to the Director, Fines Victoria for a determination under new section 165DC(1) that they are an eligible person in respect of an eligible offence.

New section 165DB(1)(a) provides that the Director, Fines Victoria must suspend any enforcement action, and not take any further enforcement action, under the **Fines Reform Act 2014** against the applicant in respect of each eligible offence included in their application.

New section 165DB(1)(b) provides that the Director, Fines Victoria may direct an enforcement agency to suspend any enforcement action, and not take any enforcement action, under the **Infringements Act 2006** against the applicant in respect of each eligible offence included in the application.

New section 165DB(2) sets out the formal requirements for a direction by the Director, Fines Victoria to an enforcement agency to suspend enforcement action under new section 165DB(1)(b).

New section 165DB(3) provides that the suspension of enforcement action under new section 165DB(1) begins when the application is received by the Director, Fines Victoria and ends on the date notice is given by the Director, Fines Victoria to the enforcement agency of the outcome of the application.

New section 165DC(1) provides that the Director, Fines Victoria must determine that an applicant under the scheme is an eligible person in respect of an eligible offence if the Director is satisfied that—

- the applicant was served with an infringement notice in relation to the eligible offence; and
- the applicant is a prescribed person or a person included in a prescribed class.

New section 165DC(2) provides that the Director, Fines Victoria must determine that an applicant is not an eligible person in respect of a relevant eligible offence if the Director is satisfied that the criteria in new section 165DC(1) are not met.

New section 165DC(3) provides that if the Director, Fines Victoria determines that a person is an eligible person in respect of an eligible offence, the Director must reduce the infringement penalty in respect of the eligible offence—

- to the prescribed amount in respect of the eligible offence; or
- if a method for calculating the rate of reduction for an eligible offence is prescribed, the amount calculated in accordance with the prescribed method.

New section 165DC(4) provides that if the Director, Fines Victoria reduces the infringement penalty in respect of the eligible offence, the infringement penalty is taken to be reduced in accordance with the determination.

New section 165DC(5) provides that despite new section 165DC(4), if the applicant has already paid an amount in respect of the eligible offence that exceeds the infringement penalty as reduced, the person is not entitled to a refund of the excess.

New section 165DD provides for notification of a determination by the Director, Fines Victoria that an applicant is an eligible person in respect of an eligible offence.

New section 165DD(1) provides that new section 165DD applies if the Director determines—

- that an applicant is an eligible person in respect of an eligible offence; and
- that the infringement penalty is reduced, and specifies the amount of the reduced infringement penalty resulting from the determination.

New section 165DD(2) provides that the Director, Fines Victoria must, in writing, notify the following of the determination—

- the applicant; and
- if a direction to suspend enforcement action has been given under new section 165DB(1)(b) to an enforcement agency, the enforcement agency.

New section 165DD(3) provides that the applicant is not liable for any fees related to any fine which is the subject of an application under the scheme that accrue while the application is being determined.

New section 165DD(4) provides that the period during which an enforcement agency that has been given a direction to suspend enforcement action under new section 165DB(1)(b) in relation to an eligible offence may commence a proceeding for that offence is extended by 6 months after the date of the notice given under new section 165DD(2)(b).

New section 165DE(1) and (2) provide that if the Director, Fines Victoria determines that a person is not an eligible person in respect of an eligible offence under the scheme, the Director, Fines Victoria must give written notice of that determination within 21 days of its making to—

- the applicant; and
- any enforcement agency to which the Director, Fines Victoria has directed the agency to suspend enforcement under new section 165DB(1)(b).

New section 165DE(3) provides that within 21 days of the Director, Fines Victoria notifying an applicant of a determination that the person is not an eligible person, the person must—

- pay the infringement penalty and any fees that have been added to the infringement penalty under the **Infringements Act 2006**, the **Fines Reform Act 2014** or any regulations made under those Acts; or
- take any other action in relation to the fine which the person may take under the Principal Act, the **Infringements Act 2006** or the **Fines Reform Act 2014**.

New section 165DE(4) provides that an applicant under the scheme is not liable for any fees related to any fine which is the subject of an application under the scheme that accrue while the application is being determined.

New section 165DE(5) provides that the period during which an enforcement agency that has been given a direction under new section 165DB(1)(b) in relation to an eligible offence may commence a proceeding for that offence is extended by 6 months after the date of the notice given to the agency under new section 165DE(2)(b).

Part 4—Consequential amendments relating to Parts 2 and 3

Division 1—Consequential amendments relating to Part 2

Division 1 of Part 4 sets out various consequential amendments to other Acts relating to Part 2 of the Bill.

- Clause 22 amends section 480(1)(a) and (b) of the **Children, Youth and Families Act 2005** to replace references to the "Department of Health and Human Services" with references to the "Department of Health", to reflect a machinery of government change.
- Clause 23 consequentially amends section 600M(4) of the **Children, Youth and Families Act 2005**. The amendment made by paragraph (a) will enable the Secretary or an officer in charge of a remand centre, youth residential centre or youth justice centre to have regard to any relevant pandemic order under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or any other infectious disease in determining a period of isolation of a detained person for the purposes of detecting COVID-19 or any other infectious disease, or preventing or mitigating transmission.
- The amendment by paragraph (b) replace references in section 600M(4)(b) of the **Children, Youth and Families Act 2005** to replace references the "Department of Health and Human Services" with references to the "Department of Health", to reflect a machinery of government change.
- Clause 24 consequentially amends section 600N(3) of the **Children, Youth and Families Act 2005**. The amendment made by paragraph (a) will enable the Secretary, in determining whether or not to give effect to an entitlement for a person in isolation to access the outdoors and undertake outdoor recreational activities, to have regard to any relevant pandemic order under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or any other infectious disease.
- The amendment made by paragraph (b) replaces references in section 600N(3)(b) of the **Children, Youth and Families Act 2005** to replace references the "Department of Health and Human Services" with references to the "Department of Health", to reflect a machinery of government change.

- Clause 25 consequentially amends section 112U of the **Corrections Act 1986**. The amendment made by paragraph (a) will enable the Governor or the Secretary, in exercising a power under Part 10B (which relates to measures to prevent, detect and mitigate the risk of COVID-19 or related health risks in relation to the prison system) to have regard to any relevant pandemic order under the **Public Health and Wellbeing Act 2008** relating to COVID-19 or any other infectious disease.
- The amendment made by paragraph (b) replaces references in section 112U(b) of the **Corrections Act 1986** to the "Department of Health and Human Services" with references to the "Department of Health", to reflect a machinery of government change.
- Clause 26 consequentially amends section 7A(3) of the **Court Security Act 1980**. The amendments made by paragraphs (a) and (b) ensure that a reference to "the security, good order or management of the court premises" includes a reference to any relevant pandemic order made under new Part 8A of the **Public Health and Wellbeing Act 2008** in relation to the COVID-19 pandemic at the court premises.
- Clause 27 consequentially amends section 42C of the **Evidence (Miscellaneous Provisions) Act 1958**. That Act provides for certain persons to appear before a court by audio link or audio visual link in certain "exceptional circumstances". The amendments made by this clause expand the definition of *exceptional circumstances* to include a pandemic declaration made under new section 165AB of the **Public Health and Wellbeing Act 2008** in an area where an accused is required to appear before a court or required to transit through in order to appear before a court.
- Clause 28 consequentially amends section 190 of the **Occupational Health and Safety Act 2004**. The amendments made by this clause provide that, for the purposes of section 112 of that Act (which relates to issuing of prohibition notices), a failure to comply with—
- a pandemic order relating to the COVID-19 pandemic made under new section 165AI of the **Public Health and Wellbeing Act 2008**;

- a direction relating to the COVID-19 pandemic given by an authorised officer under section 200(1)(d), new section 165B(1)(a) or new section 165BA(1)(a) of the **Public Health and Wellbeing Act 2008**—

is taken to be an activity that involves an immediate risk to the health or safety of a person (which is one of the grounds for issuing a prohibition notice).

Clause 29 consequentially amends section 191 of the **Occupational Health and Safety Act 2004**. The amendments made by this clause provide that, for the purposes of section 120 of that Act (which relates to giving of workplace directions), a failure to comply with—

- a pandemic order relating to the COVID-19 pandemic made under new section 165AI of the **Public Health and Wellbeing Act 2008**;
- a direction relating to the COVID-19 pandemic given by an authorised officer under section 200(1)(d), new section 165B(1)(a) or new section 165BA(1)(a) of the **Public Health and Wellbeing Act 2008**—

is taken to be an activity that involves an immediate risk to the health or safety of a person (which is one of the grounds for issuing a direction).

Clause 30 amends section 192 of the **Occupational Health and Safety Act 2004**, which currently provides for the repeal of Part 16 of that Act (which sets out a range of COVID-19 temporary measures) on 16 December 2021. The clause amends the repeal date to be 26 April 2022.

Clause 31 consequentially amends section 17(1) of the **Parliamentary Committees Act 2003** to provide that the Scrutiny of Acts and Regulations Committee has the functions conferred on it by the **Public Health and Wellbeing Act 2008**. Division 4 of new Part 8A gives the Scrutiny of Acts and Regulations Committee functions relating to scrutiny, suspension and disallowance of pandemic orders.

Clause 32 consequentially amends section 197H(3) of the **Planning and Environment Act 1987**. The amendments expand the definition of *emergency declaration* in that section to provide an exception to compliance with certain requirements in relation to inspection

of documents if there is a pandemic declaration under new section 165AB of the **Public Health and Wellbeing Act 2008**.

- Clause 33 consequentially amends section 105A(6) of the **Public Administration Act 2004**, which relates to a declaration of an emergency situation for the purposes of Part 7A of that Act. The amendment expands the meaning of *declaration of a state of emergency* for the purposes of section 105A to include a pandemic declaration under new section 165AB of the **Public Health and Wellbeing Act 2008**.
- Clause 34 amends section 105E the **Public Administration Act 2004** to replace various references in that section to "an employee" with references to "a public sector employee". This clarifies that the power of a public sector body Head to take actions in relation to employees under section 105E (when a declaration that an emergency situation exists is in force under Part 7A of that Act) can be exercised in relation to any public sector employee as defined in the **Public Administration Act 2004**.
- Clause 35 consequentially amends section 52(5) of the **Victoria Police Act 2013**. Section 52(4) of that Act provides that a protective services officer on duty in an emergency has in the emergency area all the duties and powers imposed or conferred on a protective services officer under that Act or any other Act. The amendments made by this clause expand the meaning of *emergency* for the purposes of section 52 to include a pandemic declaration being made under new section 165AB of the **Public Health and Wellbeing Act 2008**, and expand the meaning of *emergency area* to include the pandemic management area to which a pandemic declaration applies.

Division 2—Consequential amendment that commences on 16 December 2021

- Clause 36 makes consequential amendments to the Principal Act relating to the COVID-19 state of emergency. These amendments commence on 16 December 2021.
- Subclause (1) amends section 198(7)(c) of the Principal Act to omit words and phrases in that section providing for the emergency declaration in respect of the COVID-19 pandemic to continue in force for a total period of 21 months. This will no longer be required after the expiry or revocation of the state of

emergency in respect of the COVID-19 pandemic (which cannot be extended beyond 15 December 2021, noting the state of emergency declaration was first made on 15 March 2020).

Subclause (2) repeals section 198(8A) and (8B) of the Principal Act, which relate to reporting on the COVID-19 state of emergency if the state of emergency declaration is extended beyond 6 months. These reporting arrangements will no longer be required after the expiry or revocation of the state of emergency in respect of the COVID-19 pandemic (which cannot be extended beyond 15 December 2021).

Division 3—Consequential amendments relating to Part 3

- Clause 37 makes a consequential amendment to the definition of a *finer application* in section 3 of the **Fines Reform Act 2014**. The amendment inserts a reference to an application under new section 165CZ(1) of the Principal Act as new paragraph (ab) in the definition. The effect of this amendment is to enliven the deemed service provisions in section 181 of the **Fines Reform Act 2014** where the Director serves a document by post to an address supplied by a person in an application under new section 165CZ(1).
- Clause 38 amends section 5 of the **Fines Reform Act 2014** to expand the functions and powers of the Director, Fines Victoria set out in that provision to include the performance of functions under new Part 8B of the Principal Act.
- Clause 39 makes consequential amendments to section 8 of the **Fines Reform Act 2014** to extend the Director, Fines Victoria's powers to delegate functions, powers and duties to include the delegation of functions, powers and duties under new Part 8B of the Principal Act.
- Clause 40 amends section 17 of the **Fines Reform Act 2014** to provide for a 6-month extension of the period for registering an infringement fine for enforcement under the **Fines Reform Act 2014** where—
- an application for a determination has been made under new section 165DC(1) of the Principal Act; and
 - a direction has been given to an enforcement agency under new section 165DB(1)(b).

The 6-month extension applies as from the date of service of the notice of the outcome of the application on the applicant under new section 165DD(2)(a) or new section 165DE(2)(a), as applicable.

- Clause 41 makes a consequential amendment to section 184 of the **Fines Reform Act 2014** to insert a reference to new Part 8B of the Principal Act in that provision. This extends the scope of the offence of intentionally providing false or misleading information to information provided in writing under the new concessional infringement penalty scheme in new Part 8B of the Principal Act.

Part 5—Amendments relating to quarantine detention fees during the COVID-19 pandemic

Division 1—Certain requirements disapplied

- Clause 42 substitutes section 238D of the Principal Act, which disapplies certain requirements for consultation under sections 6 and 7 of the **Subordinate Legislation Act 1994**.

The disapplication will only apply to the first statutory rule made under section 238A, 238B or 238C of the Principal Act after the commencement of clause 42 of the Bill.

Division 2—Other matters

- Clause 43 amends section 238B of the Principal Act, to enable regulations to prescribe matters dealing with COVID-19 Quarantine Victoria's (CQV) own initiative waiver under new section 260A of the Principal Act, which is being inserted by clause 52 of the Bill.
- Clause 44 repeals section 238E of the Principal Act. Repealing this section will allow quarantine fees to be charged beyond 31 December 2021.
- Clause 45 inserts new sections 248A and 248B to provide for transitional arrangements associated with the charging of a late fee to be set out in new sections 260B to 260D of the Principal Act. The provision enabling the charging of a late fee is being inserted by clause 52 of the Bill.

New section 248A inserts a transitional definition of ***quarantined person*** to provide that the definition of a ***quarantined person*** in the Principal Act will continue to apply after the commencement of section 256(b) of the Principal Act, which is being inserted by clause 47. Section 256 of the Principal Act defines a ***quarantined person***.

New section 248B inserts a transitional provision to enable CQV to issue a payment reminder notice to a person in accordance with new sections 260B and 260C as if the person became liable to pay fees on or after the commencement of clause 52 of the Bill.

CQV may only do this where a person is liable to pay fees under section 257 of the Principal Act and an amount of the fees remains unpaid immediately before the commencement of clause 52 of the Bill.

New section 260B of the Principal Act, which is being inserted by clause 52 of the Bill, outlines the circumstances when CQV may issue a first payment reminder notice. Section 260C of the Principal Act, which is being inserted by clause 52 of the Bill, outlines the circumstances when CQV may issue further reminder notices.

Clause 46 amends section 255 of the Principal Act to insert new and substitute existing definitions.

The following new definitions are inserted—

- ***contact details***, for the purposes of section 257 of the Principal Act, means the person's telephone number, email address or postal address;
- ***first payment reminder notice*** means a reminder issued under section 260B of the Principal Act, which is being inserted by clause 52 of the Bill;
- ***further payment reminder notice*** means a reminder issued under section 260C of the Principal Act, which is being inserted by clause 52 of the Bill.

The definition of ***specified place of detention*** is substituted to mean the place of detention specified by an authorised officer under section 200(1) of the Principal Act, or in a pandemic order made under new section 165AI of the Principal Act, or by an authorised officer in the exercise of a pandemic management

power under new section 165B(1)(b) or 165BA(1)(b) of the Principal Act.

Clause 47 substitutes section 256(b) of the Principal Act to include persons detained under new section 165B(1)(b) or 165BA(1)(b) of the Principal Act in the definition of a *quarantined person* under new section 256(b) of the Principal Act.

Clause 48 inserts new section 257(4) into the Principal Act.

New section 257(4) provides that another person may accept liability to pay a detained person's prescribed quarantine fees by providing written notice to CQV stating their acceptance of the liability.

Clause 49 amends section 258 of the Principal Act.

Subclause (1) amends section 258(1) of the Principal Act to provide that CQV is required to provide an invoice, subject to new subsection (1A).

Subclause (2) inserts new subsection (1A) into section 258 of the Principal Act to provide that CQV is not required to give an invoice to a person if—

- the prescribed fees the person is liable to pay are nil; or
- payment of all the fees the person is liable to pay is waived under section 260A; or
- any other prescribed circumstance applies.

Clause 50 inserts a new section 258A into the Principal Act.

New section 258A(1) provides that CQV may request a prescribed body to provide it with the contact details of a person liable to pay fees under section 257 of the Principal Act if CQV—

- requires those details to give the person an invoice under section 258 of the Principal Act; and
- has made reasonable attempts to obtain those details from the person directly; and
- despite its reasonable attempts has not obtained those details.

New section 258A(2) enables a prescribed body to provide CQV with the requested contact details if it is satisfied the request has been made in accordance with new section 258A(1).

New section 258A(3) provides that CQV may only use or disclose a person's contact details—

- to give the person an invoice under section 258 of the Principal Act; or
- to recover fees that the person is liable to pay under section 257 of the Principal Act; or
- for another purpose permitted by law.

New section 258A(4) provides that for the purpose of the **Privacy and Data Protection Act 2014** and any other Act—

- the provision of a person's contact details under subsection (2) is taken to be a disclosure authorised by law; and
- the use or disclosure of a person's contact details under subsection (3) is taken to be a use or disclosure authorised by law.

New section 258A(5) requires that, in using and disclosing a person's contact details, CQV must comply with the Information Privacy Principles set out in Schedule 1 to the **Privacy and Data Protection Act 2014**.

Clause 51 amends section 259 of the Principal Act.

Subclause (1) substitutes the heading to section 259 of the Principal Act. The heading to section 259 of the Principal Act is "**Waiver of fees—application**" which replaces the previous heading, "**Waiver of fees**".

Subclause (2) inserts the words, "other than a person liable under section 257(4)". The purpose of this amendment is to make a person who has accepted liability to pay fees on behalf of another quarantined person ineligible to apply for a waiver of payment of those fees.

Clause 52 inserts new sections 260A to 260D into the Principal Act.

New section 260A(1) enables CQV, on its own initiative, to waive payment of fees a person is liable for under section 257 of the Principal Act. In exercising this power, CQV is to have regard to any prescribed matters or circumstances.

Section 257 of the Principal Act sets out the circumstances when a person is liable to pay quarantine detention fees.

New section 260A(2) provides that, subject to new section 260A(3), CQV must give notice of a waiver to the person.

New section 260A(3) enables CQV to not issue notice of a waiver under subsection (1) if it is impractical or inappropriate, or in the prescribed circumstances. Such circumstances will be prescribed under regulations, however, they may include—

- where the person is a refugee and notice may cause distress; or
- where the waiver was made in relation to a deceased person and notice may constitute distress to the notice recipient.

New section 260A(4) provides that such a notice must contain any prescribed information under regulations, if any.

New section 260B(1) outlines the circumstances in which CQV may issue a payment reminder notice or reminder notice fee. CQV may issue a first payment reminder notice to a person liable to pay fees under section 257 if—

- an invoice has been issued in accordance with section 258 of the Principal Act; and
- the relevant date has passed; and
- the amount of the fees has not been paid in full; and
- there are no pending waiver applications or payment plans for that amount of fees.

New section 260B(2)(a) defines the term *relevant date* to be the date specified for the amount in the most recent decision of CQV on an application relating to that amount, if any waiver applications or payment plan applications have been made relating to that amount.

In any other case, new section 260B(2)(b) provides that the date is the date specified in the invoice given under section 258 of the Principal Act. Section 258 of the Principal Act requires CQV to invoice quarantined persons for fees.

If CQV issues a first payment reminder notice, then the due date for the payment is extended to the date specified in that notice. This date must be at least 30 days after the date that notice was issued.

New section 260B(5) provides that a first payment reminder notice must be in writing, contain the prescribed information, and explain the circumstances in which the person may become liable to pay the further payment reminder notice fee under new section 260D, which is being inserted by clause 52 of the Bill.

New section 260C provides that CQV may issue a further payment reminder notice to a person if—

- the relevant date by which the fee amount for which a first payment reminder notice was previously issued has passed; and
- the amount has not been paid in full; and
- there are no pending waiver applications or payment plan applications for that amount of fees.

For the purposes of this provision, the relevant date is—

- the date specified for that amount in the most recent decision of CQV on a waiver or payment plan application relating to that amount of fees, since the first payment reminder notice was issued; or
- the date specified in the first payment reminder notice.

If CQV issues a further payment reminder notice, then the due date for the payment is extended to the date specified in that notice. This date must be at least 30 days after the date on which this further payment reminder notice was issued.

A further payment reminder notice made under this section must be in writing, contain any prescribed information and explain that the person is liable to the further payment reminder notice fee under the following new section 260D.

New section 260D provides that a person issued a further payment reminder notice under new section 260C is liable to pay the prescribed further payment reminder notice fee. The prescribed further payment notice fee must be reasonably referable to the costs incurred by the State in recording the unpaid amount of fees. CQV is not permitted to issue more than one further payment reminder notice to a person.

- Clause 53 amends section 261 of the Principal Act, which currently requires a person liable to pay fees under section 257 of the Principal Act or any part of the fees not waived under section 259 of the Principal Act, to the State. The purpose of the amendment is to specify that a person who has their fees waived under new section 260A is not required to pay fees.

New section 260A is inserted by clause 52 of the Bill.

- Clause 54 repeals section 264 of the Principal Act to allow fees to be charged beyond 31 December 2021. Section 264 currently provides for Part 14 of the Principal Act to be repealed on 31 December 2021. Part 14 sets up the legislative framework for quarantine fees.

Part 6—Amendment of Infringements Act 2006 and Fines Reform Act 2014

Division 1—Amendment of Infringements Act 2006

- Clause 55 substitutes a new definition of *special circumstances* in section 3(1) of the **Infringements Act 2006**. The new definition provides that special circumstances has the meaning given by new section 3A. Section 3(3) of the **Infringements Act 2006** is also repealed, as this provision is reproduced in new section 3A(2).

Special circumstances is one of the grounds on which fine recipients who have circumstances such as serious mental ill-health, substance addiction issues, or homelessness can seek review and withdrawal of their fines.

- Clause 56 inserts new section 3A into the **Infringements Act 2006** to provide for a new definition of the term *special circumstances*. The changes are in response to recommendation 7 of the Fines Reform Advisory Board, which delivered its *Report on the Delivery of Fines Reform* to the Government in 2020.

New section 3A(1)—

- makes changes to the requirement for a person to show a causative link (or "nexus") between their circumstances and their offending conduct; and
- creates a new category of special circumstances for fine recipients who are experiencing extremely serious circumstances that are long-term in nature and mean that the person is unable to pay or otherwise deal with their infringement fine.

New section 3A(1) provides that *special circumstances* in relation to a person means—

- a mental or intellectual disability, disorder, disease or illness where the disability, disorder, disease or illness contributes to the person having a significantly reduced capacity to understand that conduct constitutes an offence or to control conduct that constitutes an offence; or
- a serious addiction to drugs, alcohol or a volatile substance within the meaning of section 57 of the **Drugs, Poisons and Controlled Substances Act 1981** where the serious addiction contributes to the person having a significantly reduced capacity to understand that conduct constitutes an offence or to control conduct that constitutes an offence; or
- homelessness determined in accordance with the prescribed criteria (if any) where the homelessness contributes to the person having a significantly reduced capacity to control conduct that constitutes an offence; or
- family violence within the meaning of section 5 of the **Family Violence Protection Act 2008** where the person is a victim of family violence and the family violence contributes to the person having a significantly reduced capacity to control conduct that constitutes an offence; or
- circumstances experienced by the person that are long-term in nature and make it impracticable for them to pay their infringement penalty and any applicable fees or

otherwise deal with their infringement fine, and that do not solely or predominantly relate to the person's financial circumstances.

The changes to the existing categories of special circumstances will simplify the requirement for a person to satisfy the causative link (or "nexus") between their circumstances and their offending behaviour. The change means that it will be sufficient for the person to show that their circumstances *contributed to* them having a *significantly reduced capacity*, to understand or control their offending conduct, or to control that conduct (as applicable). The current requirement is for a person to show that their circumstances *resulted in* them *being unable* to understand or control their offending conduct, or to control that conduct (as applicable).

The new category of special circumstances provided for in new section 3A(1)(e) is intended to apply only to a very small cohort of fine recipients who have long-term and extremely serious circumstances that—

- may not have been present at the time of offending; and
- are particularly disabling or incapacitating in nature; and
- result in the person being unable to pay or otherwise deal with their infringement fine.

The definition excludes any circumstances that solely or predominantly relate to the person's financial circumstances. The infringements system contains other mechanisms for dealing with financial hardship, including payment plans, payment arrangements and the work and development permit scheme.

An example of extremely serious circumstances that might come within the new category is a person who is subject to an inpatient treatment order for a mental illness under the **Mental Health Act 2014**.

Division 2—Amendment of Fines Reform Act 2014

Clause 57 makes a minor consequential amendment to the note at the foot of section 10M(3) of the **Fines Reform Act 2014** so that the note refers to the substituted definition of *special circumstances* in new section 3A of the **Infringements Act 2006**.

Part 7—Repeal of this Act

Clause 58 provides for the automatic repeal of this amending Act one year after its commencement. The repeal of this Act does not affect the continuing operation of the amendments made by this Act (see section 15(1) of the **Interpretation of Legislation Act 1984**).